



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
22.09.2021

Date of Pronouncing Order
06.10.2021

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CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRP.Nos.203 & sr2308 of 2020
and
C.M.P.Nos.1122, 1134 & 14131 of 2020

CRP.No.203 of 2020

Sheela Gracy,
D/o.Late.D.Antony,
No.27, Gulam Abbas Ali Khan 2nd Street,
Thousand Lights, Chennai 600 006. ... Petitioner

Vs.

A.Velanganni (since deceased)
1.V.Regina Mary, W/o.A.Velanganni,
2.V.Lizi Haritha, D/o.A.Velanganni,
3.V.Leema Florance (died), D/o.A.Velanganni,
4.V.Leoni Belinda, D/o.A.Velanganni,
Respondents 3 to 5 are residing at
No.29, Aziz Mulk 2nd Street,
Thousand Lights, Chennai 600 006.

5.Queen Mary Vasanthi
W/o.Late.Arulappan
6.Dorthi Monika,
D/o.Late.Arulappan

7.Daras Enreita,
D/o.Late.Arulappan

8.Sagaya Alwin Raj
S/o.Late.Arulappan

All 6 to 8 are residing at
No.9/13, 8th Street,
TVS Nagar, Padi,
Chennai 600 050.

9.The Commissioner,
Corporation of Chennai,
Chennai 600 003.



Respondent 11 represented by natural guardian R10

... Respondents in both WPs

PRAYER: Civil Revision petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order passed by the learned IX Assistant City Civil Court at Chennai in EP.No.2045 of 2017 in O.S.No.6407 of 2004 dated 27.11.2019.

For Respondents : Mr.R.Selvakumar
(for R1 to R4 and R10 & R11)
Ms.Karthikaa Ashok (for R9)
Standing counsel

Sheela Gracy,
D/o.Late.D.Antony,
No.27, Gulam Abbas Ali Khan 2nd Street,
Thousand Lights, Chennai 600 006. ... Petitioner

A.Velanganni (since deceased)
1.V.Regina Mary, W/o.A.Velanganni,
2.V.Lizi Haritha,
3.V.Leema Florance (died)
4.V.Leoni Belinda,

5. Queen Mary Vasanthi
W/o. Late. Arulappan



6.Dorthi Monika,
D/o.Late.Arulappan

7.Daras Enreita,
D/o.Late.Arulappan

8.Sagaya Alwin Raj
S/o.Late.Arulappan
All 6 to 8 are residing at
No.9/13, 8th Street,
TVS Nagar, Padi,
Chennai 600 003.

9.The Commissioner,
Corporation of Chennai,
Chennai 600 003.

10.Jesudass,
S/o.Antony

11.Master Allwin Francis,
S/o.Jesudass
Respondent 11 represented by natural
guardian Father/Respondent 10

Both R10 & R11 residing at
No.49, Rajiv Gandhi Nagar,
MGR Main Road, Alampakkam,
Chennai 600 116

... Respondents in both WPs

{R10 & R11 brought on record as LRs of the
deceased R3 viz., V.Leema Florance vide
Court order dated 08/09/2021 made in
CMP.No.1122 of 2020 in CRP.No.sr2308 of 2020}

PRAYER: Civil Revision petition filed under Article 227 of
Constitution of India to set aside the fair and decreetal order
passed by the learned IX Assistant City Civil Court at Chennai
in E.A.No.2810 of 2018 in EP.No.2045 of 2017 dated 26.07.2019.

For Petitioner : Mr.A.Manoj Kumar for Mr.R.Ganesan

For Respondents : Mr.R.Selvakumar
(for R1 to R4 and R10 & R11)
Ms.Karthikaa Ashok (for R9)
Standing counsel



C O M M O N O R D E

CRP.No.203 of 2020 has been filed against the order passed by the learned IX Assistant Judge, City Civil Court at Chennai in EP.No.2045 of 2017 in O.S.No.66407 of 2004 dated 27.11.2019 and CRP.No.sr2308 of 2020 has filed against the order passed by the learned IX Assistant Judge, City Civil Court at Chennai in E.A.No.2810 of 2018 in EP.No.2045 of 2017 dated 26.07.2019.

2.Learned counsel for the Petitioner submitted that there is a dispute with regard to identification of the suit property. In the Execution Petition in E.P.No.2045 of 2017, delivery was sought to be made of the 2.6 ft x 27.6 ft on the northern side of the Respondents/Plaintiffs property, which could not be bisected without pulling down the entire superstructure of the Petitioner. If an attempt is made to bisect this 2.6 ft. x 27.6 ft, collateral damage will be caused and the Petitioner would end up homeless. Without considering these aspects, the learned IX Assistant Judge, City Civil Court at Chennai dismissed the Petition filed under Section 47 of CPC and ordered delivery.

3.In response, learned counsel appearing for Respondents submitted that it is clearly mentioned in the Plaint and in the Execution Petition that the property was encroached by the Petitioner. Therefore, she is bound to hand over the possession of the property.

4.Before taking into consideration the order passed by the learned IX Assistant Judge, City Civil Court at Chennai, in E.A.No.2810 of 2018 and E.P.No.2045 of 2017, it is necessary to find out the background of this case.

5.The deceased Mr.Velanganni, husband of the 1st Respondent and father of Respondents 2 to 4 filed a Suit in O.S.No.6407 of 2004 against the Petitioner and others and sought for the relief of permanent injunction and mandatory injunction directing the Petitioner/Defendant to remove unauthorised constructions raised within the Northern side of the of the Plaintiff's property measuring to an extent of 2.6 x 27.6 ft and hand over the vacant possession. The case pleaded in the plaint is that Mr.Velanganni was the owner of the suit property comprised in R.S.No.56/58F measuring 322 sq. ft. His father Mr.D.Antony had settled the property in his favour. By the settlement deed dated 30.01.1986, 'B' schedule property was settled in favour of Mr.Velanganni, 'C' schedule property was settled in favour of Mr.A.Arulappan and 'D' schedule property was settled in favour of Mr.A.Thomas. The Petitioner has started construction in C schedule property and while doing so, has encroached upon Mr.Velanganni's property on the Northern side and therefore, the Suit was filed.

6.After contest the Suit was dismissed on 02.08.2020.



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Against the said judgment, A.S.No.473 of 2010 was preferred. When setting aside the judgment of the trial Court, the learned Appellate Court Judge, remanded the case, with a direction to reissue the Commission to the same Commissioner with the assistance of the Surveyor, and to consider the Commissioner's report and Surveyor's plan and dispose of the case. Against the said judgment, Respondents 1 to 4 preferred CMA.No.3437 of 2014 before this Court. While disposing the CMA, this Court found that the Petitioner encroached into the northern side of the Plaintiff/Velanganni's property to an extent of 2.6 feet and in that view of the matter, the Judgment of the First Appellate Court was set aside and the Suit was decreed and further Respondents 5 to 8 and Petitioner herein were given three months time to hand over the possession of the extent of the encroached land to Respondents 1 to 4. After that EP.No.2045 of 2017 was filed, in which EA.No.2810 of 2018 was also filed under Section 47 of the CPC, alleging that Execution Petition is not executable. The said EA was dismissed on 26.07.2019, then the order of delivery was passed in EP on 27.11.2019.

7.It is evident from the background of this case that the Suit proceedings were pending from the year 2004 and execution proceedings were pending from the year 2017. When the trial Court has dismissed the Suit, the Appellate Court has remanded the matter. In the CMA preferred before this Court, this Court has granted three months time to the Petitioner to hand over the encroached portion. It appears that there is no further proceedings taken against the judgment in C.M.A.No.3437 of 2014 and therefore it has become final.

8.The judgment of the first Appellate Court shows that as per the settlement deed, the Petitioner is entitled to 12 x 27.6 ft of land. However, it was found by the Commissioner that the Petitioner is in possession of 14.6 x 26 ft of land. Mr.A.Arulappan was entitled to 11.6 x 27.6 ft of land, but he was found in possession of 9.6 x 27.6 ft of land. Therefore, it is clear from the Surveyor's report, which is part and parcel of judgment passed in C.M.A.No.3437 of 2014, the Petitioner has encroached the property to an extent of 2.6 ft in the northern side of the property of Respondents 1 to 4. The encroached portion have been identified with the help of the Surveyor's plan and there is no Appeal against the judgment passed in C.M.A.No.3437 of 2014 and it becomes final. In these circumstances, this Court have no option, except to enforce the decree.

9.In this view of this matter, there is no reason to interfere with the order of the learned IX Assistant Judge, City Civil Court passed in E.A.No.2810 of 2018 in EP.No.2045 of 2017 dated 26.07.2019 and E.P.No.2045 of 2017 in O.S.No.6407 of 2004 dated 27.11.2019 and accordingly, the orders are confirmed and



Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

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//True Copy//

Sd/-
Assistant Registrar

Sub Assistant Registrar

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To

The IX Assistant Judge,
City Civil Court,
Chennai.

+2CCs to Mr.R.Selvakumar, Advocate SR.No.52276
+1CC to M/s.Karthika Ashok, Advocate SR.No.52595

CRP.Nos.203 & sr2308 of 2020
and
C.M.P.Nos.1122, 1134 & 14131 of 2020

JPL(CO)
B.VC(08/10/2021)