

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (NPD) No.840 of 2021

and

C.M.P.No.6966 of 2021

1.Sridevi
2.Mohan

..

Applicants/Respondents/Defendants/Petitioner

Vs

Savithri

..Respondent/Petitioner/Plaintiff/Respondent

Civil Revision Petition filed under Article 227 of Constitution of India to allow the Civil Revision Petition by setting aside the fair and decretal order dated 22.12.2020 passed in E.A.No.1 of 2020 in E.P.No.54 of 2019 in O.S.No.33 of 2018 on the file of the District Munsif Court, Madurantakam.

For Petitioner

..

Mr.K.Govi Ganesan

For Respondent

..

No appearance

ORDER

This Revision Petition arises from an order dated 22.12.2020 passed in E.A.No.1 of 2020 which Execution Application has been filed in E.P.No54 of 2019 in O.S.No.33 of 2018. The Suit and Execution Petition are pending now before the District Munsif Court, Madurantakam.

2.Applicants in E.A.No.1 of 2020 are the defendants in the suit. The suit in O.S.No.33 of 2018 had been filed by the plaintiff seeking a judgment and decree for permanent injunction against the defendants who were the revision petitioners herein, restraining the plaintiff from using the common pathway which is shown as B-Schedule property and which is used according to the plaintiff to reach the A-Schedule property from the village cement road and also for costs.

3.The common pathway as described in B-Schedule property is said to be a pathway measuring to a breadth of 10 feet and a length on 200 feet which runs from East to West from village cement road. The A-Schedule property is a terraced house to an extent of 0.01.0 ars. It is claimed by the plaintiff, she had been prevented from accessing her house from the said common pathway.

4. Written statement had been filed by the defendants. However, the defendants for reasons which they are alone are aware did not further participate in the judicial proceedings and were therefore set exparte. The plaintiff was invited to tender evidence and she examined herself as PW-1 and marked Exs.A1 to A8 and the learned District Munsif, Maduranthakam, passed an exparte judgment on 03.01.2019. Thereafter, complaining that the defendants had not respected the Court judgment, the plaintiff had filed E.P.No.54 of 2019 under Order XXI Rule 32 of CPC. In that Execution Petition, the present E.A.No.1 of 2020 had been filed by the revision petitioners who are the defendants / respondents in the Execution Petition. The relief sought in the said petition was for an appointment of an Advocate Commissioner.

5. It is to be noted that the report of the Advocate Commissioner is being seriously questioned and objections have been filed. Thereafter, permission was sought for the Advocate Commissioner to revisit the said place with due notice to both the counsels or that a fresh commissioner may be appointed.

6. It is the grievance expressed by Mr.K.Govi Ganesan, learned

counsel for the petitioner that on the earlier occasion the Advocate Commissioner visited the property, the plaintiff and her counsel were present, the defendants were also present and but unfortunately there was no appearance of their counsel. It is therefore stated that the entire report has to be revisited and this can be done only by issuing a fresh warrant to the Advocate Commissioner. This request was refused by the learned District Munsif, which led to the filing of the Civil Revision Petition.

7.It is informed that the exparte decree in the suit has been set aside. Therefore, if evidence is to be recorded, evidence, both with respect to the Advocate Commissioner report and with respect to the merits of the suit may be let in the suit itself. In view of that fact, the Execution Petition may not survive and the District Munsif, Madurantakam, may take up the suit for further hearing.

8.The order under revision is set aside and the entire issue is remitted back to the District Munsif, Madurantakam, with a direction to invite the parties to adduce evidence and thereafter giving a finding on the factual issues in the case. The Revision Petition is allowed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Internet:Yes/No
Index:Yes/No
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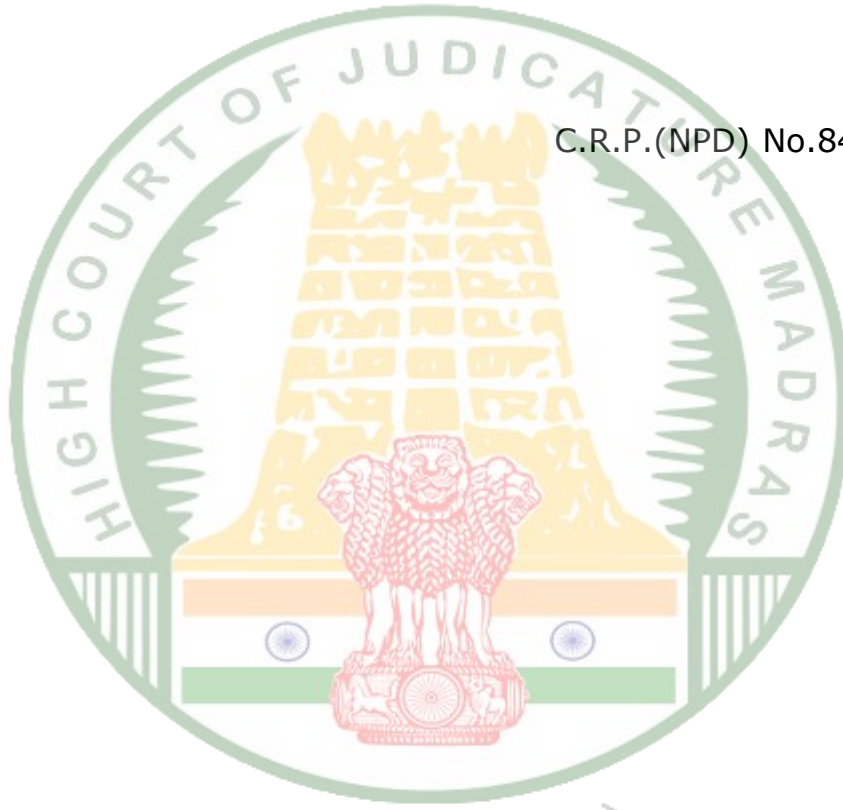
To
The District Munsif Court,
Maduranthakam.



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C.V.KARTHIKEYAN,J.

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