

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2426 of 2018

Mrs.J.Vanitha
W/o. Late D.Jayaraman

..Petitioner

Vs.

The Commissioner,
Chennai Corporation,
Chennai – 600 003.

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure praying to set aside the fair and decretal order dated 28.02.2018 made in E.P.No.1224 of 2016 in OS.No.1609 of 1996 on the file of the X Assistant City Civil Judge, Chennai.

For Petitioner : Mr.A.R.Nixon

For Respondent : Ms.Karthikaa Ashok

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 28.02.2018 made in E.P.No.1224 of 2016 in OS.No.1609 of 1996 on the file of the X Assistant City Civil Judge, Chennai, thereby dismissing the Execution Petition filed by the petitioner herein.

2. The petitioner is the plaintiff and the respondent is the first defendant in the suit. The petitioner filed a suit for declaration and delivery of possession with damages. The suit was decreed by the Judgment and decree dated 29.11.2007. Aggrieved by the same, the respondent filed the Appeal Suit in A.S.No.163 of 2006 and confirmed the Judgment and Decree passed by the trial Court in favour of the petitioner herein. In pursuant to the decree, she filed Execution Petition in E.P.Nos.622 of 2004 and 624 of 2004 for executing the decree. Both the Execution Petitions were allowed. Accordingly, the suit property was delivered to the petitioner and also a sum of Rs.50,000/- was paid as damages to the petitioner herein. Thereafter, when the petitioner was not in station, again the respondent trespassed into the property and laid road. As such, she submitted detailed representation to the respondent to restore her possession and enjoyment of the suit

property. The respondent did not take any action and as such, the petitioner filed a Writ Petition against the first respondent before the Hon'ble Division Bench of this Court in W.P.No.34203 of 2012. Though this Court had dismissed the Writ Petition dated 11.01.2013, wherein the petitioner was given a liberty to file Execution Petition to execute the decree granted in her favour. Accordingly, the petitioner filed the Execution Petition and the same was dismissed for the reason that the petitioner was already handed over the possession of the suit property in E.P.No.622 of 2004.

3. The learned counsel for the petitioner would submit that the petitioner acquired the suit property by the registered sale deed dated 15.12.1983. She also obtained planning permission to construct the house. Accordingly, she completed the construction of house and assessed to the property tax. At that juncture, the respondent herein demolished the entire house and laid road on the suit property. Therefore, she was constrained to file the suit for declaration and also seeking damages. In pursuant to the decree, delivery of possession was ordered in Execution Petition Proceedings. He further submitted that after delivery of possession, again the respondent trespassed into the property and laid road.

4. Per contra, learned counsel for the respondent contended that the suit property classified as Government Poramboke and it is a road. Therefore, this Court directed the respondent to inspect the suit property and file a report about its nature and classification. Accordingly, they inspected the suit property on 10.06.2021 and found that the suit property is a road. It is situated at old Survey No.96/26 Part and new Survey No.554 and is classified as a Sarkar Poramboke and shown as road.

5. It seems that identity of the suit property is the issue herein, since according to the respondent herein, the road laid in old Survey No.96/26 Part and new Survey No.554 is classified as a Sarkar Poramboke. Whereas the suit property is situated in Plot No.94-B, Varadharajan Street, Vetri Nagar, Madas 82 comprised in Old.S.Nos.52, 53, 55, 59, 60, 61, 63, 96/2B, 97/2B corresponding to T.S.No.25/6B, Block No.1 of Peravallur Village, Sub Registration District of Sembium and bounded on the North by Ramachandran Reddy's land, East by Plot No.94-A, South By -30 feet Road and West by Plot No.118.

6. Unfortunately, the Execution Court without verifying the above mentioned details about the said property, mechanically dismissed the Execution Petition on the ground that the possession of the suit property was already delivered to the petitioner.

7. In view of the above discussion, the order passed by the Court below in E.P.No.1224 of 2016 in OS.No.1609 of 1996 dated 28.02.2018 is set aside. Accordingly, this civil revision petition is allowed. The matter is remanded back to the Execution Court for fresh disposal. It is made clear that the Execution Court is directed to appoint the concerned authority to identify the suit property with the help of the surveyor and demarcate the suit property and pass orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No order as to costs.

सत्यमेव जयते

24.06.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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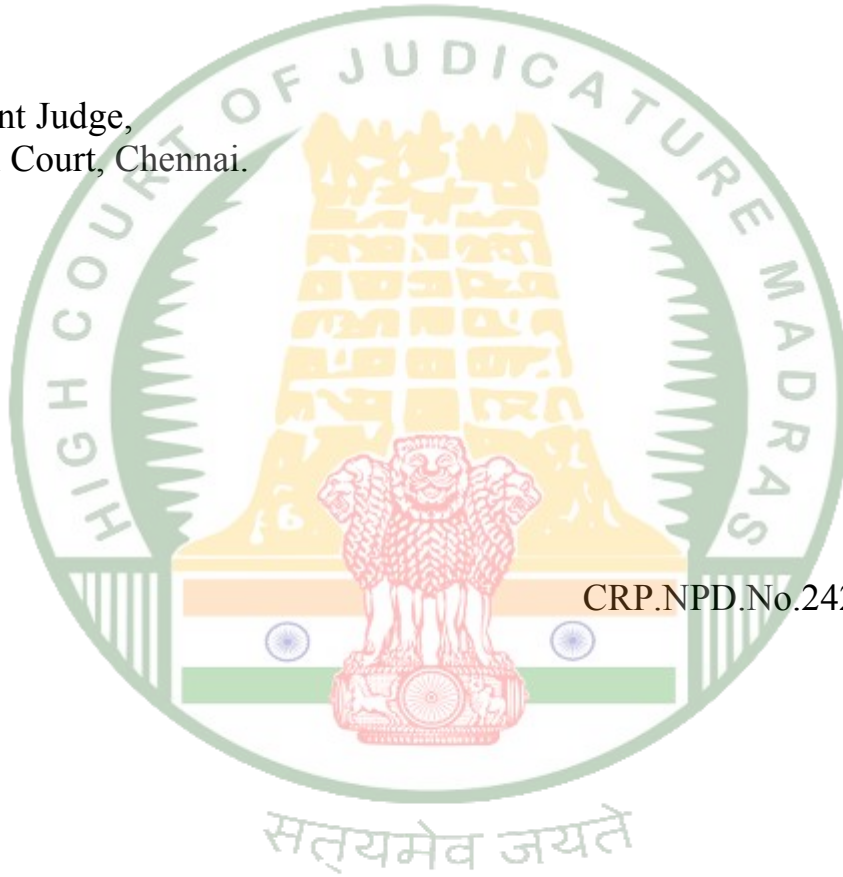
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G.K.ILANTHIRAIYAN,J.

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To

X Assistant Judge,
City Civil Court, Chennai.



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