

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.413 of 2017

and

CMP.No.1895 of 2017

Ramadoss

...

Petitioner

Vs.

Narayanan

...

Respondent

PRAYER : The Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 18.03.2016 passed in E.A.No.135 of 2014 in E.P.No.48 of 2003 in O.S.No.127 of 2000 on the file of the Learned District Munsif, Udhagamandalam.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.S.Elambharathi

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the order of the learned District Munsif, Udhagamandalam, dated 18.03.2016 in E.A.No.135 of 2014 in E.P.No.48 of 2003 in O.S.No.127 of 2000, wherein a petition filed under Section 47 (1) r/w. Section 151 of CPC was dismissed.

2. The petitioner is the judgment debtor and he has filed a petition under Section 47 of CPC, by claiming that the decree passed against him is incapable of execution due to the unidentifiable nature of the subject matter. The learned Executing Judge has dismissed the petition. Aggrieved over that the petitioner / judgment debtor has filed this Civil Revision Petition.

3. The submissions of the learned both side counsels heard.

4. The learned counsel for the petitioner submitted that that suit has been decreed as prayed for. The Trial Court has passed the decree for mandatory injunction and recovery of possession of land by removing an extent of 70 sq.ft of the encroachment in Survey No.34/7 and to hand over the cleared portion to the plaintiff. But the extent of land as mentioned is only 2 cents. Though in the decree, the extent of land is mentioned as 2 cents, in the schedule of properties, the extent is shown as 1110 sq.ft and the encroached portion is shown as 114 sq.ft. So it is submitted by the learned counsel for the petitioner that there is ambiguity in the description of the suit property and the property is unidentifiable and the decree is un-executable.

5. The learned counsel for the respondent submitted that there is some discrepancy in the property particulars and it had occurred due to some clerical error and committed by the Commissioner in mentioning the measurements in his report. However the same was rectified later by way of filing a petition to

amend the property particulars in the decree and the same was allowed and carried out. So it is submitted that there is no basis for the claim of the petitioner that the decree is un-executable.

6. In fact the learned executing Judge has also observed that there is no dispute as to the boundaries of the suit property and the encroachment is also very much identifiable. It is further observed that even before filing this petition under Section 47 of CPC, a third party has filed a petition under Order 21 Rule 97 of CPC at the time of delivery of possession by making some claims over the suit property and that has been dismissed. Subsequently the petitioner / judgment debtor has filed a petition under Section 47 of CPC and he has stated that the decree is un-executable one. The conduct of the petitioner as observed by the trial Court is only a dilatory tactics. It is not a suit in which decree has been passed without the report of the Commissioner. The Commissioner has been appointed during the suit proceedings and during the execution proceedings as well. And the commissioner has filed a report by identifying the encroachment in the suit property.

7. The learned counsel for the petitioner submitted that the Commissioner was unable to fix the boundaries and hence there is some complication in executing the decree. The suit is not filed for the relief of declaration with regards to any specific extent of the property. The cause of action appears to

have arisen only because of some encroachment and due to which the plaintiff has filed the suit for mandatory injunction for removing the same. When the physical features on the ground are in such way that encroached portion is very much identifiable, it cannot be said that the decree itself is an un-executable one. The obvious mistake in giving the measurement has also been rectified and now it seems that the discrepancy in the measurement has got rectified.

Under such circumstances, I do not find any factual or legal infirmity in the order of the Executing Court so as to warrant any interference. Hence this Civil Revision Petition is **dismissed** and the order of the learned District Munsif, Udhagamandalam, dated 18.03.2016 in E.A.No.135 of 2014 in E.P.No.48 of 2003 in O.S.No.127 of 2000, is Confirmed. No costs. Consequently, connected civil miscellaneous petition in CMP.No.1895 of 2017 is also closed.

15.07.2021

Speaking/Non-speaking

Index : Yes/No

Internet : Yes/No

jrs

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To

1.The District Munsif court,
Udhagamandalam.

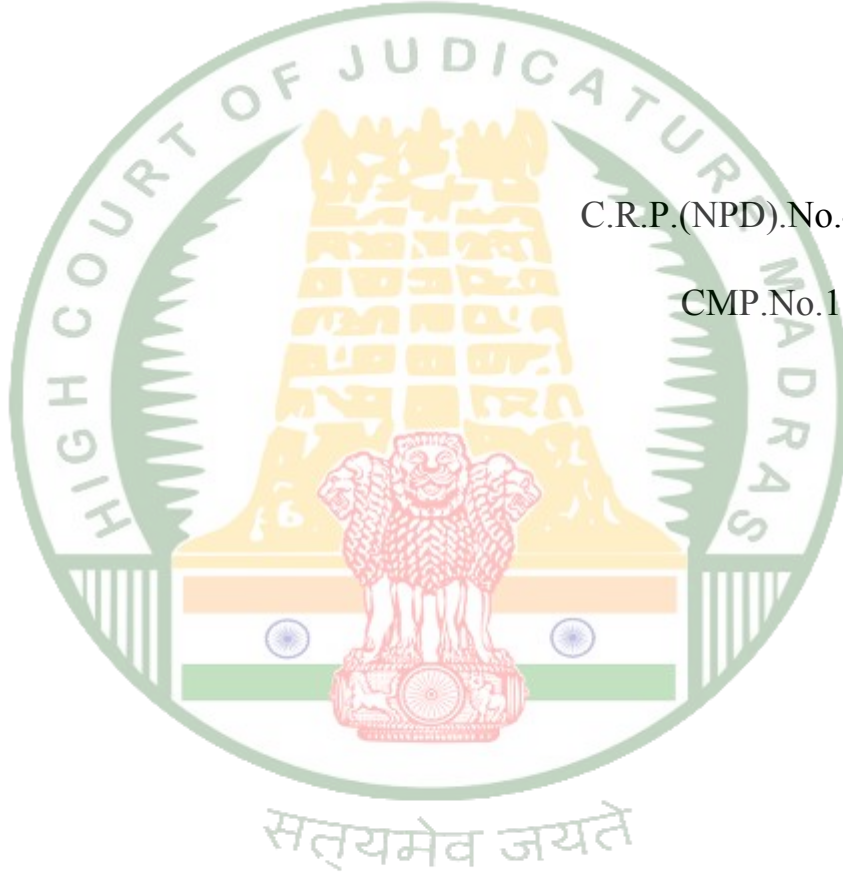
2.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

jrs



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