



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.02.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P(MD)No.857of 2010

Renganayagi

...Petitioner/Petitioner/Plaintiff

Vs.

1.Subbiah (Died)

2.Lakshmi

3.S.Muniyasamy

4.S.Mariammal

5.S.Kaleeshwari

...Respondents/Respondents/Defendants

(R3 to R5 are brought on record as lRs of the deceased 1st respondent Vide court dated 10.07.2020 made in CMP(MD)No.3741 of 2010) in CRP (MD) .No.857/2010

PRAYER:- Civil Revision Petition is filed under Section 115 C.P.C against the petition and order dated 07.01.2009 made in E.P.No.91 of 2007 in O.S.No.30 of 2005 on the file of the District Munsif Court, Kovilpatti.

For Petitioner : M/s.K.Hema Karthikeyan

For R2 to R5 : Mr.Chengizkhan

for Mr.G.Prabhu Rajadurai

Advocate Commissioner : Mr.V.George Raja

O R D E R

This revision is directed against the order of the executing court closing the execution proceedings in E.P.No.91 of 2007 based on a report of the Amin to the effect that encroachment has been removed.

2. I have heard Mr.K.Hemakarhikeyan, learned counsel appearing for the petitioner and Mr.Chengizkhan, learned counsel appearing for Mr.G.Prabhu Rajadurai, learned counsel for the respondents 2 to 5 and Kr.V.George Raja, learned Advocate Commissioner.

3. The decree in O.S.No.30 of 2005, sought to be executed is a decree for declaration, mandatory injunction and permanent injunction. Declaration was sought for in respect of the suit 2nd item of property to the effect that it is a common pathway measuring 6 feet east-west and 48 feet north-south. Mandatory injunction was sought for directing the defendants to remove the encroachment made over the said common pathway. As regards item No.3 of the suit schedule property, the plaintiff sought for declaration of her title and mandatory injunction directing the defendants to remove the encroachment. Since the defendants did not comply with the decree within the time stipulated, the decree holder sought to execute the same by way of E.P.No.91 of 2007. The executing court accepted the



report of the Amin and closed the execution proceedings.

4. Mr.K.Hemakarthikeyan, learned counsel appearing for the petitioner would point out that the executing court grievously erred in closing the execution petition. He would also point out that a Commissioner was appointed by this Court to measure the property and submitted a report and as per the Commissioner's report, the suit 2nd schedule property namely the common pathway is shown east-west 4 feet on south and east-west 2 feet 10' on north. These measurements would itself show that there is an encroachment over the common pathway. The measurement of the second schedule of property in the plaint as well as the decree is east-west 6 feet and north-south 48 feet. Therefore, it is clear that there is reduction in the width of the pathway throughout its length. The executing court was therefore not right in closing the execution petition. The order of the executing court in E.P.No.91 of 2007 is set aside. The executing court is directed to proceed with the same in accordance with law. The Commissioner's plan filed in this court will form part of the record in the execution proceedings.

5. In fine, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

1.The District Munsif Court, Kovilpatti.

2.The Section Officer(2C)

VR Section,

Madurai Bench of Madras High Court, Madurai

3.The Section Officer,

E.R.Section,

Madurai Bench of Madras High Court,

Madurai

(requested to send the commissioner's plan(alongwith advocate commissioner's Report) to the District Munsif Court, Kovilpatti)

+1 CC to M/s.H.HEMAKARTHIKEYAN, Advocate (SR-4358[F] dated 10/02/2021)

C.R.P (MD) No.857 of 2010

08.02.2021

ES (CO)

KB(05.03.2021) 2P 6C

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