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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.09.2021

DELIVERED ON : 20.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.1311 of 2019

and

C.M.P. (MD)No.7171 of 2021

Rusalayyan

...Petitioner/Petitioner/Plaintiff

Vs.

The Special Officer,
Puliyooralai Village Panchayat,
Mancode Village,
Panchayat Union Commissioner,
Melpuram, Vilavancode Taluk,
Kanyakumari District.

...Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order in E.P.No.18 of 2017 in O.S.No.535 of 2009 on the file of the Principal District Munsif Court, Kuzhithurai, dated 18.02.2019.

For Petitioner : M/s.J.Anantha Valli

For Respondent : Mr.J.Gunaseelan Muthiah

O R D E R

The Civil Revision Petition has been filed by the Petitioner/Petitioner/Plaintiff, to set aside the order, dated 18.02.2019 in E.P.No.18 of 2017 in O.S.No.535 of 2009 passed by the learned Principal District Munsif, Kuzhithurai.

C.M.P. (MD)No.7171 of 2021 is filed to appoint an Advocate commissioner to measure the suit property and note down the physical features of the suit property and also measure the pathway breadth wise beyond 3 cents pathway shown as boundary to the suit property and measure the width of the road that lies on the southern side of the property excluding three cents road that is available as southern boundary for the petition property which is the subject matter of the Court in O.S.No.535 of 2009 on the file of the Principal District Munsif Court, Kuzhithurai, as per the description to the suit schedule within a time frame fixed by this Court.

2.The revision petitioner/plaintiff has a filed a suit in O.S.No.535 of 2009 for bare injunction on the file of the Principal District Munsif Court, Kuzhithurai. The said suit was dismissed on 15.06.2012 and against the dismissal order, the revision petitioner/plaintiff has preferred an appeal in A.S.No.51



of 2012 on the file of the Subordinate Court, Kuzhithurai and the same was allowed on 28.03.2014 and the Decree and Judgment in O.S.No.535 of 2009 was set aside. Thereafter, the revision petitioner/plaintiff has filed a execution petition in E.P.No.18 of 2017 in O.S.No.535 of 2009 for restoration of suit property in its original position and the said execution petition was dismissed on 18.02.2019. Against the said dismissal order, dated 18.02.2019, the revision petitioner is before this Court.

3. Heard M/s.J.Anantha Valli, learned counsel appearing for the petitioner and Mr.J.Gunaseelan Muthiah, learned counsel appearing for the respondent.

4. It is seen from the records that the suit in O.S.No.535 of 2009 was filed against the President of Puliyoorsalai Village Panchayat. Per contra, the execution petition in E.P.No.18 of 2017 was filed against the Special Officer of the Puliyoorsalai Village Panchayat. The allegations are against only the President of Puliyoorsalai Village Panchayat.

5.The paragraph No.4 of the execution petition in E.P.No.18 of 2017 is extracted hereunder:

"the defendant through his men particularly Sanal son of Ponnayyan of Devicode attempted to form road illegally on 11.06.2016 in disobedience of the decree of the Court. In this connection, I lodged a complaint to Arumanai Police Station. Because of his political influence and his position as the Panchayat President no effective action was taken by the Police. Taking advantage of this situation the defendant and his men formed a road encroaching into about 10 links width of my property'. This was done in disobedience of the decree for injunction granted by the appellate Court. "

Therefore, he has not clearly mentioned about who disobeyed the decree.

6.As per suit schedule, from the year 1965 the suit schedule contains a common pathway within the plaintiff's property. Now, the plaintiff has filed the execution petition as the respondent has formed a road within his property and encroached 10 links.

7.There is no description of encroachment i.e., what is the length and breadth of encroachment. The revision petitioner/plaintiff did not file any commission petition to prove that the road was newly formed. The date of encroachment was also not mentioned in the execution petition.

8.The decree contains schedule property excluding 3 cents



pathway. The revision petitioner has not filed the execution petition with sufficient particulars and also the date of encroachment. No commission petition was filed before the execution Court. Along with revision also commission petition was filed.

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9. After lapse of two years, after filing this Civil Revision Petition, the petitioner has filed C.M.P.(MD)No.7171 of 2021 in C.R.P.(MD)No.1311 of 2019 seeking an order of appointment of Advocate commissioner to note down the physical features of the suit property. The Advocate Commissioner cannot find out whether the road was newly formed or not.

10. The execution petition cannot be filed without any particulars and proper pleadings. Therefore, the learned District Munsif, Kuzhithurai has rightly dismissed the execution petition.

11. In view of the foregoing reasons, this Court has no valid reason to interfere with the order passed by the Court below.

12. Finally, this Civil Revision Petition stands dismissed and the order, dated 18.02.2019 in E.P.No.18 of 2017 in O.S.No.535 of 2009, is hereby confirmed. The commission petition in C.M.P.(MD) No.7171 of 2021 in C.R.P.(MD)No.1311 of 2019 is also dismissed. No Costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Principal District Munsif,
Kuzhithurai.

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-29746[F] dated 21/09/2021)