



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.07.2021

PRONOUNCED ON : 23.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP (NPD) (MD)No.1016 of 2014

MP(MD)No.1 of 2014

(Through Video Conferencing)

1.Thangalakshmi
2.Ganesan
3.Sivalingam
4.Leela
5.Vijaya
6.Santhi
7.Pon Kailasam
8.Pon Ramesh (Minor)
9.Santhiya (Minor)Petitioners
(8 and 9th Petitioners are representated
by Gardian 6th petitioner)

Vs

P.M.Abdul Kadhar ...Respondent

Prayer:- This Civil Revision Petition has been filed, to set aside the order dated, 18.03.2014 made in EP.No.63 of 2012 in OS.No.397 of 1983, by the Principal District Munsif Court, Nagercoil, Kanyakumari.

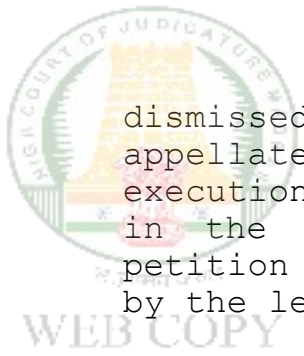
For Petitioners : Mr.D.Saravanan

For Respondent : Mr.N.S.Ramakrishna Dass

ORDER

1.This Civil Revision Petition has been filed, to set aside the order dated, 18.03.2014, made in EP.No.63 of 2012 in OS.No.397 of 1983, by the Principal District Munsif Court, Nagercoil, Kanyakumari.

2.The facts of the case, in a nutshell, are that the legal heirs of the deceased sole Defendant are the Petitioners and the Plaintiff is the Respondent. The suit was filed for declaration of title and permanent injunction against the sole Defendant, K.Ponnaiah and it was decreed. As against the same, the first appeal filed by the legal heirs of the deceased sole Defendant was allowed, modifying the judgement and decree judgement of the Trial Court and thereby, declaring the right over 2.4 cents of land alone with injunction. The Second Appeal filed as against the same was



dismissed, confirming the judgement and decree of the lower appellate court. The Plaintiff/Decree Holder had filed the above execution petition for restoration of the boundaries in 2.4 cents in the decree Schedule property. Since the said execution petition was allowed, this Civil Revision Petition has been filed by the legal representatives of the deceased sole Defendant.

- 3.The learned counsel for the Petitioners has submitted that in the absence of any decree for fixation of boundaries for 2.4 cents of land, fixation of boundaries with the help of the Taluk Surveyor will not arise and that the decree is not at all an executable decree and hence, it cannot be executed and that the court below traversed beyond the scope of the decree and that since the prayer in the execution petition is contrary, it is not maintainable and hence, the impugned order passed by the court below is erroneous and liable to be set aside.
- 4.The learned counsel for the Respondent has submitted that the Respondent had right over 2.4 cents by virtue of the judgement and decree of the lower appellate court and that taking advantage of the judgement of the lower appellate court, the Defendants had demolished the boundaries and hence, it needs to be restored and hence, the impugned order for restoration of the same, by appointing an Advocate Commissioner, is in order.
- 5.This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
- 6.The suit was filed for declaration of title and permanent injunction in respect of the suit properties. Though the reliefs as sought for in the suit had been granted by the Trial Court, the lower appellate court had granted declaration of title in favour of the Plaintiff only for 2.4 cents of land comprised in the suit survey number, with injunction, which had also reached finality.
- 7.Thus, the Plaintiff is entitled for a decree only for 2.4 cents comprised in the suit survey number. There is no prayer in the suit as to recovery of possession and for fixation of boundaries of 2.4 cents of lands. But, the prayer in the execution petition is for restoration of the boundaries in 2.4 cents in the decree Schedule property, which is contrary to the prayer in the suit. Further, there was no decree in favour of the Petitioners for fixation of the boundaries for the said 2.4 cents of land.
- 8.In the absence of any prayer as to possession and for fixation of boundaries of 2.4 cents of lands in the suit survey number in the suit and when there was a decree only for declaration of title of 2.4 cents of lands in the suit survey number, which had become final, the execution petition itself, seeking such a prayer, is not maintainable and that the



court below had traversed beyond the scope of the decree and erred in allowing the petition, by the impugned order, which is necessarily to be interfered with by this Court, by allowing this Civil Revision Petition.

9. In fine, this Civil Revision Petition is allowed. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Srcm

To

1. The Principal District Munsif Court, Nagercoil, Kanyakumari

+1 CC to M/s.D.SARAVANAN, Advocate (SR-23901[F] dated 26/07/2021)

+1 CC to M/s.N.S.RAMAKRISHNADASS, Advocate (SR-24060[F] dated 27/07/2021)

CRP(MD)No.1016 of 2014
23.07.2021

LS (CO)

LR (02.08.2021) 3P 4C