

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	23.12.2020
DELIVERED ON	19.01.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
C.R.P. (MD) No. 303 of 2017 (NPD)

WEB COPY

S. Narayanan ... Petitioner/R-2/3rd party/3rd party

vs.

1. Saradha Krishnan ...R-1/Petitioner/Petitioner/Decree
holder/ Plaintiff

2. Rajeswari ... R2/R-1/R-1/Judgment Debtor/Defendant

PRAYER: Petition filed under Section 115 of the Civil Procedure Code, to set aside the Fair and Decreeal order, dated 04.11.2016 passed in E.A. No. 409 of 2015 in E.P. No. 69 of 2014 in O.S. No. 553 of 2010 on the file of the Principal District Munsif Court, Tirunelveli.

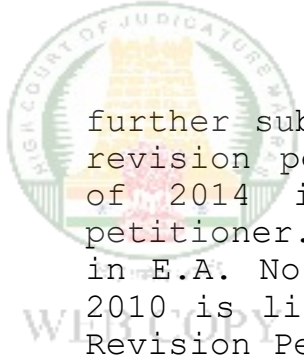
For Petitioner : Mr.V. Meenakshi Sundaram
for Mr.D. Nallathambi
For R-1 : Mr. T. Selvam
For R-2 : Mr.S.A. Ganapathy Raman

ORDER

The Civil Revision Petition has been filed to set aside the Fair and Decreeal order, dated 04.11.2016 passed in E.A. No. 409 of 2015 in E.P. No. 69 of 2014 in O.S. No. 553 of 2010 on the file of the Principal District Munsif Court, Tirunelveli.

2. The first respondent herein/plaintiff has filed a suit in O.S. No. 553 of 2010 on the file of the Principal District Munsif Court, Tirunelveli, for permanent injunction. An exparte order was passed on 11.09.2013 in the aforesaid suit. Therefore, R-1 herein/plaintiff has filed a petition in E.P. No. 69 of 2014 in O.S. No. 553 of 2010. Thereafter, R-1 herein/plaintiff has filed a petition in E.A. No.409 of 2015 in E.P. No. 69 of 2014 in O.S. No. 553 of 2010 for appointment of Advocate Commissioner and the same was allowed on 04.11.2016. Against the order, dated 04.11.2016 the instant Civil Revision Petition is filed.

3. The learned counsel appearing for the revision petitioner submitted that the Court below ought to have considered that the revision petitioner herein is not a party in the suit in O.S. No.553 of 2010 and as such the Execution application (EA) as against the revision petitioner is not maintainable. He further submitted that the Execution Court has failed to note that the Advocate Commissioner cannot be appointed for collecting evidence. He



further submitted that the Court below ought to have noted that the revision petitioner/3rd party and Execution petition in E.P. No.69 of 2014 is not at all maintainable as against the revision petitioner. He further submitted that the Order of the Court below in E.A. No. 409 of 2015 in E.P. No. 69 of 2014 in O.S. No. 553 of 2010 is liable to set aside. Hence, he prayed to allow the Civil Revision Petition.

4. In response, the learned counsel for R-1/Petitioner/Petitioner/Decree holder/Plaintiff submitted that it is clear from the affidavit filed in support of E.A.No. 409 of 2015 in E.P. No. 69 of 2014 in O.S. No. 553 of 2010 that the application has been filed only for the purpose of fixing boundaries to substantiate the said claim. Accordingly, he submitted that the trial Court correctly allowed the application.

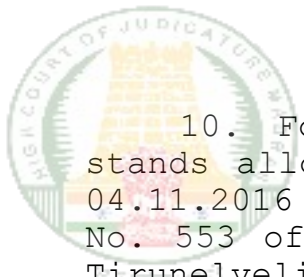
5. The learned counsel appearing for the R-2/R-1/R-1/Judgment Debtor/Defendant submitted that the application filed by the first respondent herein/plaintiff is not maintainable. He also set out the contentions raised in the E.A.409 of 2015.

6. Heard on either side and the records were examined carefully.

7. The petitioner in E.A. No. 409 of 2015 /plaintiff had filed E.A. No.409 of 2015 under Order 26 Rule 9 and Section 151 of the Civil Procedure Code to appoint commissioner to note down the physical features and the status of destruction of the bund by R-2/3rd party.

8. The petitioner in E.A. No.409 of 2015/plaintiff had filed a suit for permanent injunction or recovery of possession from the defendant and for mesne profits. Suit was decreed for permanent injunction and mesne profits. Regarding recovery of possession suit was dismissed. E.P. No. 69 of 2014 was filed for contempt as defendant had disturbed the possession of the plaintiff. But, suddenly, he filed E.A. No. 409 of 2015 against the defendant and 3rd party/revision petitioner herein.

9. The 3rd party was not a party to the suit. Contempt petition was filed against the defendant only to note down the feature Commissioner was appointed in the year 2016. Stay was also granted in the Civil Revision Petition. A Commissioner cannot fix the date of encroacher and cannot note down the physical features after four years for the reason in the E.P. No.409 of 2015. The respondent/plaintiff cannot seek relief against the third party on the basis of the decree. She can seek remedy before the appropriate forum. Since the 3rd party is not a party in the suit and the suit is also not for declaration. The plaintiff is not sure about his possession. She claimed contra relief in suit.



10. For the aforesaid reasons, the Civil Revision Petition stands allowed and set aside the Fair and Decreetal order, dated 04.11.2016 in E.A. No. 409 of 2015 in E.P. No. 69 of 2014 in O.S. No. 553 of 2010 passed by the learned Principal District Munsif, Tirunelveli. No Costs.

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Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1) The Principal District Munsif Court, Tirunelveli.

2) The Section Officer, (2Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-1213[F] dated 19/01/2021)

C.R.P. (MD) No. 303 of 2017 (NPD)
19.01.2021

MJ (CO)

KB (29.01.2021) 3P 5C