



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.1999 of 2018

and

CMP.No.16838 of 2018

Ramasamy

... Petitioner / Plaintiff / Petitioner

Vs.

Chettiannan

... Respondent / Defendant / Respondent

Civil Revision Petition filed under Section 115 of CPC., to set aside the fair and decreetal order dated 08.09.2017 in REP No.113 of 2006 in O.S.No.21 of 1984 on the file of the District Munsif Court, Rasipuram.

For Petitioner .. Mr.R.Subramanian

For Respondent .. Mr.S.R.Varun Karthick
For Mr.C.Jagadish

ORDER

This revision petition has been filed questioning, the dismissal of
REP No.113 of 2006 in O.S.No.21 of 1984 by the learned District



Munsif, Rasipuram by an order dated 08.09.2017. The plaintiff in O.S.No.21 of 1984 is the revision petitioner herein. The respondent is the defendant. They had been at lis for the past 38 years and the suit has now slowly meandered around various Courts, various proceedings and has painfully touched the final stage by the filing of an Execution Petition. But the Execution Petition itself had been closed, necessitating the filing of the present Revision Petition.

2.O.S.No.21 of 1984 had been filed by the revision petitioner herein seeking a declaration that the plaintiff is entitled to the suit property and for a direction against the defendant to deliver a portion of the suit property. The suit property was described as being in R.S.No.117/1 measuring 0.12 cents and situated in Namagiripet village in Salem District. According to the plaintiff, the portion encroached by the defendant was three cents. The suit traveled up to this Court and finally a judgment in S.A.No.1536 of 1994 had been delivered. The suit was decreed.

3.Thereafter, the revision petitioner filed REP.No.113 of 2006 seeking execution. The execution mainly surrounded the three cents said



to be in occupation of the defendant. This Execution Petition came up for consideration on 08.09.2017. The Execution Petition was presented under Order 21 Rule 35 CPC seeking recovery of possession.

4.A perusal of the order passed reveals that the Executing Court had ordered delivery of possession as per the plan and report of the Advocate Commissioner. The Amin of the Court tried to deliver possession in accordance with such plan and report, but the Amin found that the plan and report of the Advocate Commissioner differed from what was available in the FMB records and in the A-Register. The warrant was therefore, returned without being executed. The learned District Munsif, probably being frustrated over the parties who have been at lis for such a long number of years decided that the Execution Petition should be closed and therefore, closed the Execution Petition.

5.The learned District Munsif should have realized that the parties are at lis, but they would like to see a natural end to the entire litigation. Closure of Execution Petition would leave them nowhere. Neither will the plaintiff be able to enjoy the fruits of the decree nor would the defendant would permitted to rest in peace, since he would always



apprehend that the plaintiff would come back and seek recovery of possession, in view of the lawful decree obtained by him.

6.I would therefore interfere with the order of the District Munsif, Rasipuram, who had directed that REP No.113 of 2006 should be closed by order dated 08.09.2017.

7.A direction is issued to the District Munsif Rasipuram to proceed in manner known to law, directing the Amin to compare the schedule mentioned property with the revenue records namely, FMB and the A-Register and determine the portion for which recovery was granted, and thereafter, proceed in manner known to law to execute the decree. The cursory closure of the Execution Petition cannot be countenanced by this Court.

8.The Civil Revision Petition is therefore allowed. The order under revision is set aside.

9.The learned District Munsif, Rasipuram, is directed to reopen REA.No.113 of 2006 and if required issue notice to both the parties and



in their presence proceed further to execute the decree in accordance with the provision under Order 21 Rule 35 CPC and in accordance with the revenue records and compare the same with the schedule as given in the plaint. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

10.It is hoped that the learned District Munsif Rasipuram, would bestow some attention in disposing REP No.113 of 2006 in manner known to law, and endeavour to dispose of the same on or before 31.10.2022.

16.03.2022

Internet:Yes/No

2/3

Index:Yes/No

smv

To

The District Munsif Court, Rasipuram.



WEB COPY



6

C.V.KARTHIKEYAN,J.

Smv

C.R.P.NPD.No.1999 of 2018

16.03.2022
2/3