



C.R.P. (NPD) No.2082 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (NPD) No.2082 of 2019

and

C.M.P.No.13452 of 2019

Kumarasamy

.. Petitioner

Vs.

1.Jothimani

2.Ramanathan

.. Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal orders passed by the I Additional District Munsif, Erode, dated 08.04.2019, in E.A.No.101 of 2018 in E.P.R.No.40 of 2017 in O.S.No.1534 of 2004.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.M.Karthik

ORDER

This Civil Revision Petition is directed against the order in E.A. No.101 of 2018 in E.P. No.40 of 2017 in O.S. No.1534 of 2004 on the file of I Additional District Munsif Court, Erode.

2. Brief facts that are necessary for the disposal of this Civil Revision



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Petition are as follows:

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The revision petitioner as plaintiff filed a suit in O.S. No.1534 of 2004 on the file of I Additional District Munsif Court, Erode, for permanent injunction restraining the defendants in the suit from interfering with the plaintiff's peaceful possession and enjoyment of suit 'A' schedule property and to restrain the defendants from interfering with the plaintiff's right to take water through the channel in suit 'B' schedule property. The suit is also for an injunction restraining the defendants from interfering with the plaintiff's right to draw water and irrigate plaintiff's lands by taking water from the well situated in the suit 'C' schedule property. A Counter Claim was also raised. The trial Court decreed the suit and allowed the counter claim by declaring the first defendant's right over the channel marked as "A,B,C,D" in the plan appended to the counter claim and by directing the plaintiff to restore the channel within three months. The respondents filed an execution petition in E.P. No.40 of 2017 to execute the decree by allowing counter claim and the execution petition was contested by the defendant on the ground that the defendants have already provided a channel course with the width of 4 ft. so as to enable the plaintiff to irrigate his land from South East direction. It is also stated



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that the respondent has provided a channel as per decree in counter claim and the decree is therefore fully complied with.

3. The revision petitioner filed an application for appointment of Advocate Commissioner directing him to note down the existence of Cobar Gas plant and if the channel course is provided in that particular line, there is a possibility of damage to the existing Cobar Gas plant. Similarly the Advocate Commissioner was also required to note down the physical features to show that the channel course provided by the petitioner is sufficient to ensure free flow of water. The said petition was opposed by the respondents. As admitted in the counter claim of defendants in the suit was also allowed by declaring that the first defendant is entitled to the channel shown as 'A', 'B', 'C', 'D' as per the plan appended to the counter claim. The plaintiff in the suit was also directed to restore the channel, as it was before, by granting a decree for mandatory injunction. It was pointed out that during pendency of the suit itself, an Advocate Commissioner was appointed to note down the physical features and that the report was filed along with the plan.

4. Since the first defendant has filed the application for the relief of



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mandatory injunction to restore the water course as per decree in O.S. No.1533 of 2004, the lower Court observed that the appointment of an Advocate Commissioner to note down the physical features so as to execute the decree not in terms of the judgment and decree of the trial Court, but as per the convenience of the revision petitioner, cannot be considered. As against the order dismissing the petition filed by plaintiff, the above Civil Revision Petition is filed.

5. This Court is unable to find any merits in this Civil Revision Petition as the grounds raised in this revision petition are unsustainable. The appointment of Advocate Commissioner is permissible to elucidate any matter in dispute. While the Commissioner can be appointed for local inspection, so as to find out and resolve the actual dispute, the Court is not expected to appoint an Advocate Commissioner to find out whether the decree of the trial Court can be avoided on the basis of the plea which was negated by the trial Court at the time of granting relief in terms of the counter claim raised by the respondent.



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6. This Court finds no merit in the Civil Revision Petition and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2022

Internet : Yes
Speaking order / Non-speaking order
Index: Yes / No
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To

The I Additional District Munsif, Erode.



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S.S.SUNDAR, J.,

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