



Review Application (MD) No.51 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Review Application (MD) No.51 of 2021

and

C.M.P.(MD)No.5988 of 2021

Mahalakshmi

... Review Petitioner

versus

1. Indirani (died)
2. Veerarajendran
(R2 is the legal heir of the
first respondent)

... Respondents

Review Application filed under Sections 114 and Order 47 Rule (1) of C.P.C., to review the order dated 17.04.2021 passed in CRP(MD)No.1405 of 2018.

For Review Petitioner : M/s.R.Janakiramulu
For Respondent : Mr.D.Venkatesh



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ORDER

This Review Application is filed seeking to review the order dated 17.04.2021 passed in CRP(MD)No.1405 of 2018.

2. CRP(MD)No.1405 of 2018 was filed against the fair and decreetal order dated 27.01.2017 passed in E.A.No.147 of 2012 in E.P.No.157 of 2000 in O.S.No.961 of 1996 on the file of the Principal District Munsif Court, Palani.

3. The review petitioner herein is the second defendant and the respondents herein are plaintiffs 2 and 3 in O.S.No.961 of 1996 on the file of District Munsif, Palani. The said suit was filed for permanent injunction. In the said suit, both the parties have arrived at a compromise. Based on the compromise memo, the suit in O.S.No.961 of 1996 was decreed by Judgment and Decree dated 03.10.1996. Thereafter, the review petitioner/2nd defendant is said to have violated



the decree and put up a construction. Therefore, the respondents/plaintiffs 2 and 3 filed an Execution Petition. The review petitioner/2nd defendant also filed E.A.No.147 of 2012 to reject the Execution Petition that there is no mandatory injunction granted. The said application was dismissed by the trial Court, by order dated 27.01.2017. Aggrieved over the same, the review petitioner has filed the above CRP(MD)No.1405 of 2018. This Court, on 17.04.2021, after considering the merits of the case, dismissed the Civil Revision Petition holding that there is no merit in the grounds raised in support of the Civil Revision Petition. Now, the review petitioner has filed the Review Application on the ground that she has not violated the decree passed in O.S.No.961 of 1996 and therefore, there is no necessity for filing the Execution Petition and hence, the order passed in the Civil Revision Petition has to be reviewed.

4. The Execution Petition was filed by the respondents/plaintiffs 2 and 3 stating that the review petitioner/2nd defendant, who has agreed



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for the terms of compromise, has violated the same and the decree passed by the trial Court and put up the construction. Therefore, for removing the construction, the respondents/plaintiffs 2 and 3 have filed the Execution Petition to take action based on the decree passed in O.S.No.961 of 1996.

5. In the Civil Revision Petition, this Court has also appointed an Advocate Commissioner to note down the physical features. The Advocate Commissioner has also submitted two reports that there was no construction in the common pathway, but, the revision petitioner constructed sunshade in his two windows, which were projected towards the common pathway. However, in the Commissioner's report, it is not stated that the revision petitioner constructed wall on the northern side, by leaving $\frac{3}{4}$ feet in his property to put up steps, sunshade and rainfall water, as per the compromise memo. Therefore, this Court, by order dated 17.04.2021, dismissed the Civil Revision Petition. However, the revision petitioner / review applicant claims that



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he has not violated the conditions of the compromise memo and that the reports of the Advocate Commissioner is in his favour.

6.Be that as it may, this Court is not inclined to dwell into it. The review applicant can very well agitate his claim before the Executing Court, which shall decide the issue as to whether he violated the decree or not based on the available materials. Therefore, this Review Application is disposed of, with a direction to the Executing Court to dispose of E.P.No.157 of 2000 in O.S.No.961 of 1996 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
ogy/gk

01.11.2022

To

The learned Subordinate Judge,
Palani.



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B.PUGALENDHI, J.

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