



CRP.No.685 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.No.685 of 2023 and

CMP.No.5440 of 2023

Karthik

... Petitioner

Vs.

Rathna @ Rathinammal

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decretal order dated 31.01.2023 made in REP.No.75 of 2017 in OS.No.80 of 2012 on the file of District Munsif Court, Mettur and to allow the civil revision petition.

For Petitioner : Mr.C.Prabakaran

For Respondent : Ms.G.Priya Vadhena

ORDER

Challenging the impugned order dated 31.01.2023 passed in REP.No.75 of 2017 in OS.No.80 of 2012 on the file of District Munsif Court, Mettur, the judgment debtor filed this revision.



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2. The suit in OS.No.80 of 2012 was filed by the respondent / plaintiff for relief of declaration for easementary right, mandatory injunction to remove the encroachment made by the defendant 'C' schedule pathway. The petitioner had filed suit for relief of permanent injunction. Both the suits were tried jointly. The suit filed by the respondent herein was allowed and the suit filed by the revision petitioner was dismissed. While dismissing the suit, already direction was given to the revision petitioner to remove the construction made in the 'C' schedule property, more particularly the building construction with superstructure with hollow blocks with cement sheet within two months. But the defendant failed and execution proceedings was initiated. The executing court also ordered to vacate the property. Challenging the same, the judgment debtor filed this revision.

3. The learned counsel for the petitioner submits that as per the original decree passed in OS.No.802 of 2012, there is no specific order with regard to removal of the said cement sheeted hollo block superstructure. But in executing court, they filed EP for removal of the said encroachment. Without amending decree in original suit, straight away decree holder filed execution petition, as such is not executable. Hence, he prayed to set aside the findings given by the executing court.



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4. The learned counsel appearing for the respondent / plaintiff submits that while disposing the suit, the trial Judge directed the defendant to remove the encroachment in the 'C' schedule property within two months. As he failed, now the plaintiff filed execution petition to remove the said encroachment by executing the order passed by the trial Judge.

5. On perusal of the trial court judgment in paragraph 7, 8 and 9, the trial Judge categorically stated that in 'C' schedule property, there is an encroachment made by putting up hollow block construction by encroaching East West 5 feet, north south 27 feet. So to remove the encroachment, two much time was given to the defendant, but defendant not removed the said encroachment. Hence, they rightly filed execution petition and executing court also rightly ordered to remove the encroachment from the 'C' schedule property. Therefore, the execution petition correlated with the decree passed by the trial Judge, which needs no interference. Therefore, this revision petition has no merits and liable to be dismissed.



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6. Accordingly, this civil revision petition is dismissed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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T.V.THAMILSELVI, J.

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To
District Munsif Court,
Mettur

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