



CRP.No.2589 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2589 of 2019 and
CMP.No.17058 of 2019

Muniammal

... Petitioner

Vs.

Kaliamoorthy(died)

1.Vasanthi

2.Senthilkumar

3.Vijayalakshmi

4.Revathy

... Respondents

PRAYER:

Civil Revision petition is filed under Section 115 of CPC to set aside the decretal and fair order dated 06.06.2019 passed in EA.No.109 of 2018 in EP.No.10 of 2017 in OS.No.276 of 2002 on the file of District Munsif Court, Tiruvallur.

For Petitioner : Mr.Bhavanantham J.R.K.

For Respondents : Mr.S.P.Yuvaraj

ORDER

This civil revision petition has been filed to set aside the decretal and fair order dated 06.06.2019 passed in EA.No.109 of 2018 in EP.No.10 of



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2017 in OS.No.276 of 2002 on the file of District Munsif Court, Tiruvallur, thereby engaged Firka Surveyor and directed to assist the court amin for measuring the property as mentioned in the decree for the purpose of delivery.

2. The learned counsel for the petitioner would submit that the petitioner is the judgment debtor in the suit filed by the respondents for declaration and recovery of possession. However, she remained *exparte* before the trial court and *exparte* decree was passed. On the strength of the *exparte* decree, the respondents filed execution petition in order to execute the decree in EP.No.10 of 2017 in which the petitioner filed counter. While pending execution petition, the respondents filed application to appoint surveyor in order to survey the suit property. It was ordered without even ordering notice to the petitioner and without giving any opportunity of hearing. The decree itself is inexecutable one since as per the Commissioner's report, the encroachment portion is situated on the northern side towards east and west admeasuring 1.8 meters. Therefore, the court amin could not able to identify the encroachment area and could not able to execute the decree. Under these circumstances, the surveyor cannot be appointed to execute the decree.



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3. Heard, the learned counsel appearing on either side.

4. On perusal of the document, revealed that the respondents filed suit for declaration and recovery of possession. According to the respondents, part of the property comprised in 'A' schedule property situated in survey No.311/23 and in old S.No.311/2 situated at Vengathur Village, Tiruvallur Taluk and District bounded on north by new road, south by S.No.310, west by plot No.33, east by plaintiff's remaining extent in plot No.34 with the linier measurements of north to south 92 feet, east to west 6 feet, in all 552 sq.ft encroached by the petitioner herein. Therefore, in order to execute the said decree, the execution court rightly appointed surveyor to survey the encroached portion in order to execute the decree of delivery of possession. In fact, the petitioner was served with notice in the execution petition and she also filed counter. At that juncture, the respondents filed application for appointing surveyor in order to execute the decree. Therefore, the surveyor is directed to measure the encroached portion as per the decree passed in OS.No.276 of 2002 to effect delivery of possession. Hence, this Court finds no infirmity or illegality in the order passed by the court below.



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5. Accordingly, this civil revision petition is dismissed.

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

23.02.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The District Munsif,
Tiruvallur.

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