



CRP No.4266 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-01-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

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And

CMP No.22408 of 2022

M.Balasubramanian

.. Petitioner

vs.

1.V.Kulandaivel

2.K.Santhana Krishnan

.. Respondents

PRAYER : This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 08.08.2022 and made in EP No.49 of 2021 in OS No.129 of 2010 on the file of the learned Principal District Munsif, Erode.

For Petitioners : Mr.T.Gowthaman for
Mr.J.Vinoth

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 08.08.2022 passed in EP No.49 of 2021 in OS



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No.129 of 2010 on the file of the learned Principal District Munsif, Erode.

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2. The revision petitioner is the defendant and the respondents are the plaintiffs in the suit. The respondents instituted the suit for declaration and for mandatory injunction.

3. It is not in dispute that the suit was decreed in favour of the plaintiffs on 14.02.2018 in OS No.129 of 2010.

4. The learned counsel for the revision petitioner states that the defendant has not preferred any appeal and thus the decree passed in the suit became final.

5. The Trial Court decreed the suit by stating that the suit property's extents are to be measured and determined by both the plaintiffs and the defendant, within a period of two months. However, the parties have not executed the decree within a period of two months as stipulated by the



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Trial Court.

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6. The learned counsel for the revision petitioner states that the respondents/plaintiffs filed EP No.49 of 2021 for execution of the decree passed in OS No.129 of 2010.

7. The Trial Court, instead of asking the parties to execute the decree, appointed Bailiff to execute the decree and therefore, the petitioner is constrained to move the present Civil Revision Petition.

8. The learned counsel for the revision petitioner states that even in case the decree was not executed within a period of two months, the respondent ought to have approached the Court for the purpose of obtaining leave to file the Execution Petition.

9. This Court is of the considered opinion that such procedure



became unnecessary in view of the fact that the decree became final and as per the said decree, within a period of two months, the parties are bound to determine the disputed boundary in the suit schedule property.

10. In the event of failure on any one of the party, the aggrieved party is at liberty to move an Execution Petition for the purpose of executing the decree in the manner known to law. Thus there is no impediment for moving an Execution Petition under the procedure contemplated.

11. In the present case, EP No.49 of 2021 was filed by the respondents/plaintiffs. The Trial Court for the purpose of executing the decree, appointed the Bailiff and therefore, the procedures as contemplated was followed by the Trial Court and this Court do not find any perversity or infirmity as such.

12. When the Trial Court decreed the suit by providing an opportunity to both the plaintiffs and the defendant to determine the



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boundary by surveying the property and they have failed to execute the decree, then any one of the party is at liberty to move the Execution Petition.

13. In the present case, the respondents/plaintiffs instituted the Execution Petition and thus there is no acceptable ground for the purpose of entertaining the present Civil Revision Petition.

14. Accordingly, the present Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

04-01-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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S.M.SUBRAMANIAM, J.

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To

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The Principal District Munsif,
Erode.



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