



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2023

Pronounced on : 06.12.2023

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CORAM :

THE HONOURABLE Mrs. JUSTICE **K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD).No.909 of 2022
and C.M.P.(MD).No.3624 of 2022

Jabasthial Kannan

...Petitioner

Vs.

Muppidathi (died)
1.Suladai Vadivu,
2.Esakkiammal,
3.Arunachalam

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decretal order dated 06.12.2021, passed in C.M.A No.8 of 2019 on the file of the Principal Sub Court, Tirunelveli, confirming the fair and decretal order dated 27.08.2019. passed in E.A.No.3 of 2019 in E.P.No.174 of 2013 in O.S.No.595 of 2009 on the file of the Principal District Munsif Court, Tirunelveli.

For Petitioner

: Mr.T.Selvam
for Mr.S.B.Kamalanathan

For Respondents

: Mr.D.Nallathambi

ORDER

This revision petition has been preferred as against the order dated 06.12.2021, passed in C.M.A.No.8 of 2019 on the file of the Principal Sub Court, Tirunelveli, confirming the fair and decretal order dated 27.08.2019 passed in E.A.No.3 of 2019

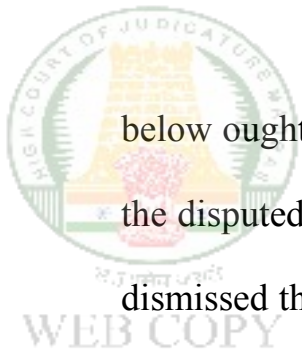


in E.P.No.174 of 2013 in O.S.No.595 of 2009 on the file of the Principal District
Munsif Court, Tirunelveli.

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2. According to the revision petitioner, the revision petitioner/plaintiff filed a suit in O.S.No.595 of 2009 on the file of the Principal District Munsif Court, Tirunelveli, in which the respondents/defendants filed a counter claim. The suit was decreed in favour of the revision petitioner and the respondents preferred A.S.No. 133 of 2012 and A.S.No.149 of 2012 on the file of the Principal Sub Court, Tirunelveli. Both the appeals were dismissed by the First Appellate Court. Thereafter, the respondents, as petitioners, filed E.P.No.174 of 2013, to execute the decree passed in the counter claim. The said execution petition was allowed. The Court Ameen also visited the suit property and noted that the disputed wall is not situated in the common lane and returned the warrant by stating that the decree could not be executed. Hence, the revision petitioner filed E.A.No.3 of 2019 under Section 47 of C.P.C. However, the executing Court has dismissed the above application on 27.08.2019, against which, the revision petitioner preferred C.M.A No.8 of 2019 before the Principal Sub Court, Tirunelveli and the same was dismissed on 06.12.2021.

3. It is the submission of the learned counsel for the revision petitioner that the disputed wall is not situated in the common lane and decree obtained by the respondent cannot be executed by the Courts below. According to him, the Courts



below ought to have held that as per Ameen's report filed before the executing Court, the disputed wall cannot be removed, since it is not situated in the common lane and dismissed the execution petition filed by the respondents. Aggrieved by the same, the present revision is preferred.

4. On the other hand, the learned counsel for the respondents would submit that the executing Court cannot go behind the decree passed by the Trial Court, the respondents/defendants in the suit have filed their counter claim by stating that the revision petitioner/plaintiff has encroached the common lane and constructed the disputed wall and therefore, the respondents/defendants sought relief of mandatory injunction to remove the disputed wall from the common lane. The above counter claim was allowed by the Trial Court. In pursuance of the decree, the respondents/defendants filed Execution Petition for removing the disputed wall from the common lane and the same was also ordered by the executing Court. The Court Ameen also surveyed the suit property with the Surveyor and filed a report stating that there is no encroachment in the common lane. However, the Court Ameen, without adhering to the decree passed by the Trial Court, erroneously returned the warrant beyond the scope of his power. Further, the executing Court has no power to re-open the decree passed by the Trial Court. Hence, the Principal Sub Judge has rightly dismissed the C.M.A filed by the revision petitioner which calls for no interference.



5. Heard both sides and perused the records.

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6. Admittedly, the Trial Court has allowed the counter claim filed by the respondents/defendants based on the finding that the revision petitioner/plaintiff has encroached the common pathway and constructed a wall in the said common pathway. Therefore, the executing Court cannot travel behind the decree passed by the Trial Court. That apart in the judgment and decree passed by the Trial Court in the above suit, it is absent that the respondents, as defendants, were directed not to interfere with the common pathway enjoyed by the plaintiff. At the same time, it had also directed the petitioner/plaintiff to remove the disputed wall from the common lane and granted a decree of mandatory injunction in favour of the respondents/defendants. Accordingly, the respondents/defendants filed E.P.No.174 of 2013 to remove the disputed wall from the common pathway. Moreover, the petitioner/plaintiff has categorically admitted about constructing the wall in the common pathway and contrary to the said admission, he had denied the construction of the wall in the common pathway in the above execution petition.

7. Moreover, it is the duty of the Court Ameen to execute the decree passed in favour of the respondents/defendants. The Court Ameen erroneously returned the warrant by stating that the common wall is situated in the property of the petitioner/plaintiff, which is contrary to the decree passed by the Trial Court. The



C.M.A in C.M.A.No.8 of 2019, which calls for no interference.

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In the result, this Civil Revision Petition is dismissed by confirming the fair and decretal order passed by the First Appellate Court. Connected miscellaneous petition is closed. There shall be no order as to costs.

06.12.2023

Internet : Yes/No

Index: Yes/No

apd

To

- 1.The Principal Sub Judge, Tirunelveli,
- 2.The Principal District Munsif, Tirunelveli.



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