



C.R.P.(MD)No.674 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 06.11.2023

PRONOUNCED ON: 24.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.674 of 2023

and

C.M.P.(MD)Nos.3140 and 7009 of 2023

T.Sudalaimuthu

: Petitioner/Respondent/
Defendant

Vs.

V.Ramakrishnan

: Respondent/Petitioner/
Plaintiff

PRAYER:- Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal order passed in E.P.No.69 of 2017 made in O.S.No.112 of 2010, dated 16.02.2023, on the file of the Subordinate Court, Tiruchendur.



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For Petitioner : Mr.M.C.Swamy

For Respondent :Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.T.Arivukumar

: Mr.R.J.Karthik
Advocate Commissioner

ORDER

The Civil Revision Petition is directed against the order passed in E.P.No.69 of 2017 in O.S.No.112 of 2010, dated 16.02.2023, on the file of the Subordinate Court, Tiruchendur.

2. The respondent has filed a suit for declaration and recovery of possession in O.S.No.112 of 2010 on the file of the Subordinate Court, Tuticorin and the suit was decreed on 03.12.2012. The revision petitioner has preferred an appeal in A.S.No.12 of 2013 before the Principal District Court, Tuticorin and the same was ordered to be dismissed on 12.03.2015. The revision petitioner has then preferred Second Appeal in S.A.(MD)No.519 of 2015 before this Court and the same was partly allowed, vide judgment dated 17.09.2020. In the meanwhile, the decree



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holder has laid the execution petition in E.P.No.98 of 2015 before the Subordinate Court, Tuticorin and subsequently the said execution petition was transferred on the point of territorial jurisdiction to the file of the Subordinate Court, Tiruchendur and the same was taken on file in E.P.No.69 of 2017.

3. In the Second Appeal, a learned Judge of this Court, vide judgment dated 17.09.2020, by partly allowing the second appeal, has declared the respondent/plaintiff's right to the ground floor and the first floor and recovery of the same from the petitioner/defendant and that the second floor portion was allowed to be retained by the defendant along with the support of the floors below as well as the right of access for the effective enjoyment of the second floor. Admittedly, there was no further appeal and as such, the judgment passed in the Second Appeal has attained finality. After passing of the judgment in the Second Appeal, the Executing Court, at the instance of the revision petitioner, has appointed an Advocate Commissioner in E.A.No.2 of 2020 to inspect the schedule property and to suggest an agreeable proposal to construct a staircase in the front portion of the shop and accordingly, the Commissioner has filed his report with plan, suggesting that a staircase can be constructed in the



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front portion of the petition mentioned property on the north-eastern corner at an extent of south-north 3 feet, east-west 7 feet in the ground floor and in continuation in the first floor to reach the second floor.

4. It is not in dispute that the revision petitioner as well as the respondent have raised objections to the Commissioner's report and plan and for the suggestions made by the Advocate Commissioner. The learned Executing Court, by observing that despite sufficient chances having been granted, both parties could not arrive at a mutual agreeable staircase and also considering the submissions made by the Counsel for the decree holder that though the suit has been decreed on 03.12.2012, he was not able to enjoy the fruits of the decree due to the non-execution of the same, has passed the impugned order dated 16.02.2023, directing the judgment debtor to deliver the ground floor and first floor portions in the suit property and hand over the same to the decree holder and directed that the delivery has to be effected by 16.03.2023 and further directed, after effecting delivery of the ground floor and first floor of the schedule property, the Municipal Engineer of Tiruchendur Municipality and the Junior Enggineer of PWD (Buildings) Department of Tiruchendur to inspect the schedule property, ascertain the stability of the property and



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take into consideration the existing Buildings Rules, the decision of the High Court and suggest the possibility of constructing a proposed staircase in the front side ie., on the eastern side of the property to facilitate the judgment debtor to use the second floor from the ground floor through the first floor and further directed the decree holder, after taking delivery of the ground floor and first floor of the property, not to use the same for any specific purpose till the proposed staircase to ensure the accessory right of the judgment debtor to reach the second floor is erected. Challenging the above order of the Executing Court, the judgment debtor has preferred the present Civil Revision Petition.

5. When the revision petition was moved for admission on 13.03.2023, a learned Judge of this Court, permitting the petitioner to explore the possibility for putting up the staircase to access to the second floor in terms of the report given by the Advocate Commissioner, has ordered issuance of notice to the respondent and granted an order of interim stay of the impugned order, dated 16.02.2023. When the matter was taken up again on 20.04.2023, the learned Judge of this Court, by observing that in order to put an end to the confusion caused by the judgment and decree dated 17.09.2020 of this Court in S.A.(MD)No.519



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of 2015 and in the fitness of things, an Advocate Commissioner has to be appointed and appointed Thiru.R.J.Karthick, Advocate as Commissioner, directing him to visit the property in the presence of both parties along with the Chartered Engineer, to give a report regarding the feasibility of putting up a spiral staircase on the south eastern side of the shop, so that the judgment debtor to have an access to the second floor in terms of the decision of this Court in the Second Appeal, without a major compromise over the property in the ground floor and first floor and thereby modified the interim order already granted.

6. When the matter was listed at the instance of the learned Advocate Commissioner on 05.06.2023, taking note of the submission of the Advocate Commissioner that there was an acute shortage of Chartered Engineers in Tuticorin District, he was directed to take the assistance of the registered Engineers / licensed Engineers registered under the provisions of the Tamil Nadu Combined Development and Building Rules, 2019 and the order of this Court dated 20.04.2023 was modified accordingly.



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7. In pursuance of the directions of this Court, the learned Advocate Commissioner has filed his report and plan dated 26.06.2023 along with the report of the Engineer engaged by him. Thereafter when the matter was taken up on 30.06.2023, considering the submission made by the learned Senior Counsel for the decree holder that since schedule property is located near the seashore area at Tiruchendur Town, there is a possibility of the structure having got corroded over a period of time and hence, he suggested an alternate plan to the suggestion given by the registered Engineer for spiral and rectangular staircase on the front of the shop and instead a staircase can be run directly from the ground to the existing staircase on the first floor for common usage of both the petitioner and the respondent, directed the learned Advocate Commissioner to convey the new proposal to the registered Engineer who has visited the property and get a report and also directed the revision petitioner to make arrangements to vacate the premises by the next date of hearing, so that the construction of staircase can be started without further delay, subject to the feasibility of the new proposal. Thereafter, the learned Advocate Commissioner has filed his second report and plan dated 24.08.2023 along with the report of the Engineer



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and the learned Advocate Commissioner, taking note of the opinion of the Engineer, suggested that there is a feasibility of formation of staircase directly from the ground floor to the existing staircase to reach the second floor for common use by the occupants in the ground floor, first floor and the second floor and the conclusion of the Commissioner in his report dated 24.08.2023 is extracted hereunder for better appreciation:

“The commission reveals that there is feasibility of formation of a staircase directly from the ground floor to the existing staircase to reach the 2nd floor for common usage by the occupant in the ground floor, 1st floor and 2nd floor. On the south eastern portion of the shop, a common pathway has been provided by the registered engineer measuring 2'8” in width so as to reach the existing staircase. The total consumption of the width of the common pathway is 3 feet and after construction of the wall it will be reduced into 2'8”. The highlighted proposed common passage construction in the ground floor is shown as “ABCDE”. In the first floor, the proposed common passage is shown as “FGH”. In the 2nd floor, the same has been shown as “IJK”. A roller shutter entrance is provided by the Engineer in the proposed common passage. The ground floor occupant is provided with a door in the “CD” portion. In the first floor, “FG” portion a door is also provided for the occupant in the first floor. Similarly, a door is provided in the 2nd floor in



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“IJ” portion for the occupant in the 2nd floor. The ground floor occupant can also use the vacant portion below the staircase which is also presently covered with temporary structure. The ground floor common lane with construction consumes 64 square feet and the 1st floor and the 2nd floor passage with construction consumes 20 square feet each. The estimated cost of common passage using brick and cement is Rs.1,00,000/- and the estimated cost of construction of common passage using aluminum fabrication is Rs.1,20,000/-. The Registered Engineer has opined that it will take minimum of 2 weeks for the proposed construction.”

8. As already pointed out, there were suggestions initially to have a separate staircase on the front of the schedule property for reaching directly to the second floor and another suggestion to have a spiral staircase on the south eastern side of the shop. Now, the Engineer and the learned Advocate Commissioner have given their suggestions to retain the existing staircase by forming a common pathway on the south eastern portion of the shop so as to reach the existing staircase. It is not in dispute that when the Advocate Commissioner appointed before the trial Court suggested that a staircase can be put up on the front portion of the shop, ie., on the north easter corner at an extent of south north 3 feet



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and east west 7 feet, the same was objected to by the decree holder stating that since the frontage measurement of the schedule shop itself being 14 ½ feet, constructing a staircase with the measurement of east west 7 feet and south north 3 feet in the ground floor on the eastern side would be lost causing much loss to the petitioner and that the judgment debtor has raised objection that the staircase proposed by the Advocate Commissioner would itself be very narrow and it would not be possible to take things to the second floor through it and hence a more broader staircase has to be constructed. When the proposal for spiral staircase was made, the same was also objected by the judgment debtor stating that since he is running brass vessel business, huge size of vessels cannot be uploaded in the second floor through narrow staircase and that since the building is classified as a commercial building by the Municipality, spiral staircase would affect his business activities.

9. The learned Senior Counsel appearing for the decree holder would submit that the decree holder is accepting the proposal now made by the learned Advocate Commissioner. Though the learned Counsel appearing for the respondent was not readily accepting the proposal, he has not raised any specific or serious objections to the report of the Advocate Commissioner. On considering the entire facts and



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circumstances and the suggestions already made, the present suggestion given by the learned Advocate Commissioner, dated 24.08.2023 is the best option available and the same would meet the interest of both parties. Hence, the report of the learned Advocate Commissioner dated 24.08.2023 is accepted.

10. As already pointed out, the Executing Court in the impugned order has directed the revision petitioner/Judgment debtor to vacate the ground floor and first floor portions and handed over the possession of the same to the decree holder by 16.03.2023 and that subsequently this Court in its order dated 30.06.2023 has directed the revision petitioner to make arrangements to vacate the premises by next date of hearing ie., on 17.07,2023, but admittedly the revision petitioner/Judgment debtor has neither vacated nor handed over the possession of the ground floor and first floor portion to the decree holder.

11. Though the decree holder has obtained the decree for declaration and possession as early as on 03.12.2012, despite the lapse of 11 years, is unable to realise the fruits of the decree and that the petitioner/Judgment debtor without paying anything for occupying the



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entire ground floor and the first floor portions, has been squatting on the property till now. Despite the specific orders passed by the executing Court as well as by this Court, he has not chosen to vacate the premises till now. Hence, the revision petitioner/Judgment debtor is hereby directed to vacate the ground floor and the first floor portions and hand over the vacant possession of the same to the respondent/decree holder on or before 20.12.2023. After handing over the possession of the ground floor and the first floor of the petition mentioned property by the Judgment debtor to the decree holder, the learned Advocate Commissioner is directed to execute the plan proposed by him in his report dated 24.08.2023 and accepted by this Court, with the help of the same Engineer within a period of one month thereafter. The costs for construction of common passage estimated at Rs.1,00,000/- is to be shared by the petitioner and the respondent equally. Both parties are directed to pay Rs.20,000/- each to the learned Advocate Commissioner towards the initial remuneration.

12. With the above directions, the Civil Revision Petition is disposed of accordingly. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.



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13. Post the matter for reporting compliance with regard to delivery of the property on **21.12.2023.**

24.11.2023

Index : Yes : No

Internet : Yes : No

Note: Issue order copy on 27.11.2023

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To

1. The Subordinate Court, Tiruchendur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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24.11.2023