



C.R.P.(MD) No.382 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(MD) No.382 of 2020

P.Sithambaram

.. Petitioner/Petitioner/
Plaintiff

Vs.

K.Palaniammal

.. Respondent/Respondent/
Defendant

Prayer: Petition filed under Section 115 of Code of Civil Procedure to set aside the order and decree dated 19.10.2019 made in E.P.No.2 of 2019 in O.S.No.44 of 2008 on the file of the Court of the Subordinate Judge, Manamadurai, Sivagangai District.

For Petitioner : Mr.G.Gomathi Sankar

For Respondent : Mr.K.C.Ramalingam



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ORDER

The petitioner herein filed E.P.No.2 of 2019 in O.S.No.44 of 2008 on the file of the Court of the Subordinate Judge, Manamadurai, seeking execution of the decree dated 10.08.2015 passed in O.S.No.44 of 2008, whereby the learned trial Court besides other relief, also granted decree in favour of the petitioner herein directing the respondent herein to rectify the damage caused to the eastern side wall of the petitioner/decreed holder. The learned Executing Court, in order to ascertain whether the respondent herein has rectified the damage to the eastern side wall of the petitioner herein or not, appointed an Advocate Commissioner and the Advocate Commissioner submitted his report stating that there is no apparent/visible damage found in the disputed wall. However, the Advocate Commissioner, in the very same report, also stated that there was an intrusion made by the respondent into the eastern side wall of the petitioner/decreed holder by constructing a beam into the eastern side wall of the petitioner.



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2. The petitioner herein contended before the Executing Court that the said intrusion by the respondent into the eastern side wall of the petitioner by constructing a beam is required to be removed and necessary damage is required to be carried out. But the learned Executing Court, having taken into consideration a part of the report submitted by the Advocate Commissioner to the extent stating that there is no apparent damage found in the disputed wall, has chosen to terminate the execution proceedings by concluding that there is no mandatory injunction to remove the wall.

3. It is not the case of the petitioner that the eastern side wall of the petitioner/decree holder is required to be removed, but the contention of the petitioner appears to be that the beam constructed by the respondent herein by intrusion into the eastern side wall of the petitioner is required to be removed by rectifying the damage caused to the eastern side wall of the petitioner.

4. The learned Executing Court totally misconstrued and misunderstood the report submitted by the Advocate Commissioner and



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totally carried away by the mischief played by the judgment debtor and thereby terminated the Execution Proceedings.

5. This Court is unable to acknowledge the approach of the learned Executing Court. It is settled law that the entire approach of the Executing Courts should always be to give effect to the decrees passed by the competent Courts in their true letter and spirit. But in the instant case, in spite of the petitioner herein succeeding in the suit, obtaining the decree as early as on 10.08.2015, the same appears to have been frustrated by the approach of the Executing Court. The approach of the Executing Court appears to be to close the Execution Proceedings as early as possible, instead of taking steps to give effect to the decree passed in its true spirit.

6. In the circumstances and for the reasons stated above, the order under revision, terminating the Execution Proceeding is totally unsustainable and the same is accordingly set aside. E.P.No.2 of 2019 is restored on to the file of the Subordinate Judge, Manamadurai and the learned Executing Court is directed to take immediate steps for execution of the decree in its true spirit



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by duly taking into consideration the findings recorded by the Advocate Commissioner in his report dated 14.10.2019 as expeditiously as possible, at any rate, within a period of 3 months from the date of receipt of a copy of this order and report compliance to this Court by 24.07.2024.

7. Accordingly, this Civil Revision Petition is allowed. No costs.

8. List the matter on 24.07.2024 'for reporting compliance'.

29.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR

To

The Subordinate Judge,
Manamadurai,
Sivagangai District.



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MUMMINENI SUDHEER KUMAR, J.

ABR

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