



C.R.P(MD).No.981 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 26.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.981 of 2023

T.Saraswathiyammal

... Petitioner / Petitioner / Plaintiff /
Decree Holder

Vs

A.Dhakshina Moorthy Pillai (died)

1.G.Vasantha Mallika

2.N.Selvi

... Respondents / Respondents / Defendants /
Judgment Debtors

Prayer : Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order dated 07.01.2023 made in E.P.No.39 of 2021 in O.S.No.1422 of 1996 on the file of the I Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.S.Rajasekar
for M/s.Lajapathi Roy and Associates

For R1 : Mr.S.Srinivasa Raghavan

For R2 : No appearance



C.R.P(MD).No.981 of 2023

WEB COPY

ORDER

This Civil Revision Petition is filed to set aside the order dated 07.01.2023 made in E.P.No.39 of 2021 in O.S.No.1422 of 1996 on the file of the I Additional District Munsif, Tiruchirappalli.

2. The suit in O.S.No.1422 of 1996 was filed by the revision petitioner seeking the relief of permanent injunction and the same was decreed in favour of her. An appeal was preferred by the defendants in A.S.No.230 of 2008 before the appellate Court namely the learned I Additional Subordinate Judge, Tiruchirappalli. That also came to be dismissed by the judgment and decree dated 28.02.2012. Against which Second Appeal was preferred in S.A.(MD)No.38 of 2013. That also came to be dismissed on 16.12.2020. After a decree was passed by this Court, the second respondent alleged to have disobeyed the decree and judgment by inserting concrete slabs in the pillar frames forming fencing on the east abutting Chennai by pass main road and thatched shed erected with Soolayutham in the land on the South-East facing East in Trichy-Chennai by pass road also erected thatched shed on the South-East facing



C.R.P(MD).No.981 of 2023

the Trichy-Chennai by pass road. So they filed a petition seeking an order of attachment of immovable properties belongs to the second respondent and for removal of the structures.

3. That was resisted by the respondent stating that they have taken the matter to the Hon'ble Supreme Court by filing SLP. Now they are taking steps. None of the items mentioned in the B schedule are now available with the second respondent. No proper proof was made over disobedience.

4. Before the trial Court, the petitioner's husband was examined as P.W.1 and six documents were marked. On the side of the second respondent, no documents were marked. At the conclusion of the enquiry, the execution Court found that the act of violation is not properly established, since, no proper documentary evidence was produced. Against which this Civil Revision Petition is preferred.

5. Learned counsel for the revision petitioner would draw the attention of this Court to the observation made by the Execution Court



C.R.P(MD).No.981 of 2023

namely the I Additional District Munsif, Tiruchirappalli, in Paragraph No.15, 16 and 17 of the order. Reading of the above said finding of the execution Court shows that the petitioner failed to prove the photographs, CDs as per the procedure set out in Section 65 B of the Indian Evidence Act. Apart from that with regard to the photographs produced, it has pointed out that there is no proof that those are relevant to the subject matter of the property. So these are the main grounds for the dismissal.

6. Learned counsel for the revision petitioner would submit that the matter may be remanded back to the Execution Court, so that the petitioner can establish the facts by appointing a commissioner or by proving the photographs, CDs through proper procedure.

7. No doubt that the revision petitioner failed before the execution Court in proving the violation properly. In normal circumstances, to prove the violation, commissioner will be appointed to find out the physical features. That will be the concrete evidence. In the absence of any appointment of commissioner, the real fact that too with regard to the



C.R.P(MD).No.981 of 2023

physical features concerning the violations, cannot be found out. How the revision petitioner missed this important point is not known. But in the interest of justice to find out the truth, I am of the considered view that the request is made by the revision petitioner for remand must be considered.

8. On that sole ground, this Civil Revision Petition is allowed and the order dated 07.01.2023 made in E.P.No.39 of 2021 in O.S.No.1422 of 1996 is set aside. The matter is remanded back to the learned I Additional District Munsif, Tiruchirapalli and the parties are at liberty to advance and produce oral and documentary evidence including appointment of commissioner. After affording full opportunity to both sides, the matter may be disposed on its own merits without being influenced by any of the observations made by this Court.

9. With the above direction, this Civil Revision Petition is disposed of. No costs.

26.03.2024

NCC :Yes/No

5/6



C.R.P(MD).No.981 of 2023

Index :Yes/No
Internet : Yes/ No
pnn

G.ILANGOVA, J.

pnn

To

- 1.The I Additional District Munsif, Tiruchirappalli.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
C.R.P(MD)No.981 of 2023

26.03.2024