



C.R.P(MD)No.1458 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1458 of 2019

and

C.M.P(MD)Nos.7743 of 2019 &179, 181 & 183 of 2024

Sreekala

... Petitioner/Petitioner/
Petitioner/3rd Party

Vs.

1.Chellappan Pillai

2.Narayanan Nair

... Respondents/Respondent 1&2/
Petitioners/Plaintiffs

Easwara Pillai (died)

3.Lalithambika

Santhamma (died)

4.Syamalakumari

5.Krishnankutty

6.Sasikumar

7.Sanalkumar

8.Kochukrishnan Nair



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9.Manukrishnan

10.Mayakrishnan

... Respondents/Respondents 3-12/
Respondents 3-12/Defendants

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order and decretal order, dated 01.08.2019 passed in E.A.No.1 of 2019 in E.P.No.199 of 1993 in O.S.No.42 of 1983 on the file of District Munsif Court, Kuzhithurai.

For Petitioner : Mr.K.Sreekumaran Nair

For R1 : M/s.J.Anandhavalli

For R2,R3,R6-R10 : No Appearance

ORDER

One Sreekala, a third party to O.S.No.42 of 1983 had filed the present revision petition challenging an order passed in E.A.No.1 of 2019 rejecting her request to implead herself as 13th respondent in E.P.No.199 of 1993.

2. One Chellappan Pillai had filed O.S.No.42 of 1983 for the relief of declaration that they are entitled to have their plots demarcated and to lay boundary walls and also to restrain the defendants from causing any obstruction to the putting up of such boundary walls. The plaintiffs have further prayed for a decree to demarcate the southern partitions of Plot



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No.13 and southern 3 cents of Plot No.23 and to fix the alignment of boundary separating the plots of the plaintiffs from those of the defendants. The plaintiffs have further prayed for a decree to put up a mud boundary wall on the boundary as fixed under B-relief. The suit was decreed on 18.12.1991.

3. In order to execute the decree for demarcation of boundaries, the plaintiffs had filed E.P.No.199 of 1993. Pending execution proceedings, the present revision petitioner, namely Sreekala has filed an application under Order 1 Rule 10 in E.A.No.1 of 2019 to implead herself in the said execution proceedings. In the impleading application, the the revision petitioner had contended that she has purchased the property under a registered sale deed, dated 25.09.2000 and she has also put up construction in the subject matter of the suit property. Therefore, unless she is heard, she will be put to great hardship if the boundaries are demarcated. On the other hand, the decree holder has contended that the constructions were not put up by the revision petitioner, but they were put up by the original defendants. Therefore, they will not be entitled to protect the constructions that are obstructing the demarcation of boundaries.



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4. The Executing Court after considering the submissions made on either side has arrived at a finding that the present revision petitioner had already filed E.A.No.12 of 2017 under Order XXI Rule 58 and the same has been dismissed. The claim petitioner had filed A.S.No.70 of 2019 before the Sub Court, Kuzhithurai challenging the said order and the same is pending. In such circumstances, when the claim petition has already been dismissed, the question of impleading the same petitioner in the execution proceedings is not legally sustainable. On the above said terms, the impleading application has been dismissed.

5. The learned counsel appearing for the respondents / decree holders had contended that the present revision petitioner, namely Sreekala is not a third party to the suit. She has purchased the property from one of the legal heirs of the 1st defendant, namely Eswara Pillai. Further, she is also a daughter-in-law of Eswara Pillai. Therefore, she is claiming her right only through the 1st defendant. That apart, the sale deed in favour of the present revision petitioner is subsequent to the filing of the execution proceedings. She further pointed out that the suit was filed for demarcation of boundaries for two items of property. Pending execution proceedings, demarcation of boundary was carried out



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to the 1st item of the property in 1996. When the said E.P was pending for executing the decree for demarcation of boundary for the 2nd item, the present revision petitioner has chosen to purchase the property from the legal heirs of the 1st defendant and therefore, she is not entitled to any relief much less getting herself impleaded in the execution proceedings.

6. I have carefully considered the submissions made on either side and perused the material records.

7. It is clear that the present revision petitioner is a purchaser from the 1st defendant pending execution proceedings. Therefore, she is deriving her rights only from the 1st defendant and she can never be considered to be a 3rd party to the suit. In such circumstances, the application filed by her in her independent capacity to implead herself in the execution proceedings is not at all maintainable. If the constructions have been put up either by the original defendant or by the purchaser from the defendant, they have to be removed in view of the orders of this Court in C.R.P(MD)No.2407 of 2001, dated 29.01.2015, if they are obstructing the putting up of the boundary wall. In such circumstances, I do not find any merits in the revision petition.



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8. Hence, this Civil Revision Petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

05.06.2024

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

1.The District Munsif Court,
Kuzhithurai.

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



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R.VIJAYAKUMAR,J.

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Order made in
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