



C.R.P.(MD)No.715 and 716 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15/11/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) Nos.715 and 716 of 2017

and

CMP (MD) Nos.3221 and 3222 of 2017

(1)CRP (MD)No.715 of 2017:-

Boothalingam : Petitioner/Petitioner/
Petitioner/Plaintiff

Vs.

Murugesan @ Murugan : Respondent/Respondent/
Respondent/Defendant

PRAYER:-Civil Revision Petition has been filed under section 115 of the CPC to set aside the fair and decretal order, dated 08/01/2017 passed in EA No.113 of 2016 in EP No.146 of 2007 in OS No.673 of 2003 on the file of the Principal District Munsif, Nagercoil.

For Petitioner : Mr.G.Anto Prince

For Respondent : No appearance

(2)CRP (MD)No.716 of 2017:-

Sivasubramanian : Petitioner/Petitioner/
Petitioner/Plaintiff

Vs.

Murugesan @ Murugan : Respondent/Respondent/
Respondent/Defendant



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PRAYER:-Civil Revision Petition has been filed under section 115 of the CPC, to set aside the fair and decretal order, dated 06/01/2017 passed in EA No.116 of 2016 in EP No.147 of 2007 in OS No.681 of 2003 on the file of the Principal District Munsif, Nagercoil.

For Petitioner : Mr.G.Anto Prince

For Respondent : No appearance

COMMON ORDER

CRP(MD)No.715 of 2017 is filed seeking an order to set aside the fair and decretal order, dated 08/01/2017 passed in EA No.113 of 2016 in EP No.146 of 2007 in OS No.673 of 2003 by the Principal District Munsif, Nagercoil, whereas CRP(M)No.716 of 2017 has been filed against the fair and decretal order, dated 06/01/2017 passed in EA No.116 of 2016 in EP No.147 of 2007 in OS No.681 of 2003 by the Principal District Munsif, Nagercoil.

2.The facts in brief:-

The suit in OS No.673 of 2003 was decreed as prayed for, except for permanent injunction with costs in favour of the plaintiff namely R.Boothalingam, whereas the suit in OS No.681 of 2003 was decreed in part, rejecting the prayer for permanent injunction in favour of the plaintiff namely S.Sivasubramanian. The defendant, in



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both the suits, is the same person called Murugesan @ Murugan. To execute the decree, in both the suits, EP Nos.146 and 147 of 2009 were filed by the Decree Holder. Pending execution proceedings, EA Nos.113 and 116 of 2016 were filed by the plaintiff to remove the Commissioner appointed in both the cases. That came to be dismissed by the Execution Court.

3.Against which, these civil revisions are preferred by the plaintiff in both matters.

4.Heard both sides.

5.The only grievance of the revision petitioners is that without assistance of proper civil engineer, the Commissioner has undertaken the work.

6.Now, they have stated that by order, dated 12/09/2016 in EP No.146 of 2007 in OS No.673 of 2003, the Advocate Commissioner was directed to dismantle the disputed wall with the help of one Engineer to ascertain the wall condition and proceed safely with demolition. Against this specific direction, the Advocate Commissioner failed to seek Engineering assistance, causing serious trouble to the superstructure during



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demolition process. So, according to them, only with the assistance of a Civil Engineer, work must be undertaken, otherwise damage will be caused to the superstructure.

7.A report is called for from the Execution Court, wherein it has been stated that from 24/09/2016 to 11/11/2016, the matter was pending for Commissioner report and later, stay was ordered by this court in CRP(MD)Nos.715 and 716 of 2017. The matter is still pending.

8.By order, dated 12/09/2018, the following direction was issued by the trial court to the commissioner, when clarification was sought for by the commissioner. The relevant paras can be extracted herein:-

"3.As to the safety of buildings and loses to be accrued due to the apprehended collapse of buildings, the learned counsel for the respondent submits that, his building has already been armed with sufficient protection wall, apart from the disputed wall and the learned counsel for the petitioner submits that the petitioner is ready to



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bar the contingencies. Since, as ordered for point No.1, the occupants are directed to remove themselves out of the disputed buildings, this court is of the view that, both the parties shall file their declaration as requested by the learned Advocate Commissioner before this court immediately and even if they do not do so that will not fasten any liability with Advocate Commissioner of this court.

4.Furthermore, ascertaining of disputed wall, and it's condition, the Advocate Commissioner is directed to execute the warrant as per the description of schedule of property and with the help of Engineer. The respondent is directed to bear the cost for the same. If he do not do so, the petitioner is directed to carry on this work on his own costs and entitled to recover the same from the respondent as directed in the decree."



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9.The above said direction may be complied by the Commissioner.

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10.Considering the limited grievance expressed by the revision petitioners, both civil revisions can be disposed of with a direction to the Execution Court to reissue the warrant, comply the order of the trial court, dated 12/09/2016 and execute the warrant. So, this will cause no prejudice to the respondents. But on the other hand, it will ensure proper execution of the court decree.

11.With the above said direction, both Civil Revision Petitions are **allowed**, by setting aside the impugned orders passed by the court below. Both matters are remanded back the trial court for fresh consideration in the light of the above discussion. No costs. Consequently, connected Miscellaneous Petitions are closed.

15/11/2024

Index:Yes/No
Internet:Yes/No
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To,

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1.The Principal District Munsif,
Nagercoil.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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