



CRP(NPD) No.2208 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 21.07.2025

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P (NPD) No.2208 of 2020

T.M.Kandasamy

... Petitioner

..Vs.

Chokkalingam(died)

1.Dhanaselvam

2.Achuthan

3.Kalvikkarasi

Jagathambal(died)

4.C.Balasubramaniam

5.Shanmugam

... Respondents

Prayer: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 20.02.2020 made in E.P No.85 of 2014 in O.S No.209 of 1996 on the file of the learned Addl. District Munsif Court (FAC), Tirupattur by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.N.S.Sivakumar for R1 & R2
R3-died
No Appearance for R4
R5- Notice returned



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ORDER

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Challenging the order of the Executing Court dismissing the execution petition, the present revision petition has been filed by the decree-holder.

2. The suit has been originally filed in O.S No.209 of 1996 for declaration and also for permanent injunction in respect of ABCDEFGH, the portion shown in the plan. Similarly, there was an injunction in respect of portion shown as XYZ. The portions shown in the plan are relating to the common pathway as well as the drainage system. The decree and judgment had reached its finality. The Execution has been levied in E.P No.85 of 2014 for violation of the decree and judgment by the respondents/judgment-debtors. The trial Court/Executing Court, by an order dated 19.02.2019 after contest, recorded the finding that the judgment debtors had violated the decree and ordered for civil arrest of the judgment-debtors. Challenging the said order, a civil revision petition has been filed before this Court in CRP (NPD) No.1454 of 2019. However, submissions have been made before this Court as if the judgment-debtors had cleared the pathway and

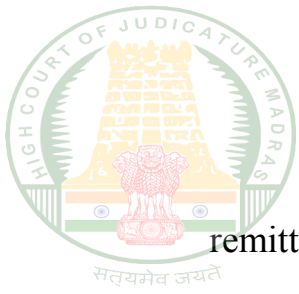


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as regards the drainage, the course of the drain has been changed and also assured before this Court that open drain is also cleared and the debris that falls on account of the construction being put up by them, is also cleared and will continue to be cleared so as to ensure a free flow of the drainage.

3. Recording the submissions, this Court remitted back the Execution Petition to the execution court for the sole purpose of verifying as to whether any pipeline for draining of the drainage water is available and kept free from debris as stated by the revision petitioners and that the same is not obstructing the flow of drainage from the toilet of the defendant. Execution Court shall give a finding with reference to the same. By remitting the matter for the Executing Court, the civil revision petition has been disposed of.

4. It is to be noted that as far as the violations with regard to the so-called encroachment was not touched by this Court, the finding recorded by the Executing Court with regard to the violation of the judgment and decree has not been altered by this Court. Only with regard to the violation of drainage pipe lines alone, this matter was



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remitted back. Thereafter, once again an enquiry has been conducted by

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the Executing Court. Objections have also been filed by the judgment debtors. However, the Executing Court recording the fact that there was a underground pipeline through which water from the toilet drains of the petitioners had been taken and the same is free from any debris, closed the execution petition itself. However, in respect of encroachment, it is observed that the decree-holder has to work out his remedy in the manner known to law by way of a separate suit. Challenging the same, the present revision petition has been filed.

5. At the outset, the very order of the trial Court closing the Execution Petition is not proper. On earlier occasion, when the very allegation was raised as if encroachment was not in a common pathway which was declared in the judgment and decree. Having found that the judgment debtors had violated its judgment and decree, the Executing Court had ordered civil prison in E.P No.85 of 2004 by order dated 19.02.2019. Now, the Executing Court had closed the execution petition on the ground that the order was only with regard to the drainage pipeline. Therefore, as far as the encroachment of the pathway is concerned, relegated the parties to go for a separate proceedings. Such



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approach by the Executing Court is nothing, but clear abdication of duties. The parties have benefit of the judgment and decree in their favour, cannot be once again relegated to go for a separate proceedings to vindicate their rights.

6. Having found that the judgment-debtors had already violated the judgment and decree, the Executing Court ought to have seen that the order passed by the Court for violation in earlier occasion reached its logical conclusion. Hence, the order of the trial Court is set aside and the Executing Court is directed to dispose of the Execution Petition as per the earlier order, since the earlier order has not been touched by this Court while disposing the civil revision petition.

7. It is the contention of the learned counsel for the respondents 1 & 2 that they have not encroached the pathway and hence, in this regard, they will file an affidavit before the trial Court. If such affidavit is filed, the trial Court shall take note of it and ensure that the pathway declared in favour of the petitioner and the drainage are properly functioning and there is no obstruction caused by the respondents.



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8. In the result, this Civil Revision Petition is allowed. No

costs.

21.07.2025

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To

The Additional District Munsif Court
Tirupattur,



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N.SATHISH KUMAR,J
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