



C.R.P.(MD)Nos.1150 & 1151 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)Nos.1150 & 1151 of 2024
and C.M.P.(MD).No.6486 of 2024

1.Shanthi

2.Dhandapani

... Petitioners 1 & 2/Respondents 1 & 2/Defendants 1 & 2
in both petitions

Vs.

Dhanabakkiam ... Respondent/Petitioner/Plaintiff in both petitions

COMMON PRAYER : Civil Revision Petitions are filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal orders passed in I.A.Nos.1 & 2 of 2022 in O.S.No.173 of 2012 dated 02.08.2023 on the file of the Principal District Munsif Court, Karur District.

For Petitioners : Mr.S.Jayavel

For Respondent : Mr.I.Robert Chandrakumar
(In both petitions)



C.R.P.(MD)Nos.1150 & 1151 of 2024

COMMON ORDER

WEB COPY

These Civil Revision Petitions have been filed to set aside the fair and decreetal orders passed in I.A.Nos.1 & 2 of 2022 in O.S.No.173 of 2012 dated 02.08.2023 on the file of the Principal District Munsif Court, Karur District.

2.The facts in brief:

Suit in O.S.No.173 of 2012 was filed by the respondent herein seeking the relief of declaration that 'A' schedule property absolutely belongs to him, permanent injunction and for declaration that 'B' schedule property is a pathway to the plaintiff to access 'A' schedule property as an easement of necessity and for mandatory injunction to remove the construction made in the 'B' schedule property, cost, etc.

3.The defendants are the revision petitioners, who entered appearance and filed the statement before the trial Court. The suit was decreed without any cost, granting two months time for the execution of the mandatory injunction order. Decree was about to be put in execution. After passing of the decree I.A.No.1 of 2022 was filed by the respondent



C.R.P.(MD)Nos.1150 & 1151 of 2024

herein under Section 152 of Civil Procedure Code, seeking permission of the court to amend the decree and plaint schedule stating that the decree was put in execution in E.P.64 of 2016 in respect of mandatory injunction. When they visited the property along with amin and Village Administrative Officer, it was found that the measurements are wrongly mentioned in the 'B' schedule, instead of mentioning 'North-South – 4 feet and East-West – 85 feet', it was wrongly mentioned as 'East-West – 4 feet and North-South – 85 feet'. But, in the plaint the measurements are properly stated. But, in the schedule it was wrongly mentioned.

4.That applications were resisted by the revision petitioner stating that it will amount to obtaining another decree, which is not permissible under law. After hearing both sides the trial Court allowed the petition. Against which these revisions are preferred.

5.Heard both sides.

6.For clarifying the issue as to whether the mistake occurred only in the schedule of the plaint or in the body of the plaint, perusal of plaint



is required. In paragraph No.11 in the description of property namely 'B' schedule the following averments are made

“11.The suit 'B' schedule pathway runs from North-South main road lying on the west. The width of the said pathway is 4 feet and length of the pathway from the said North-south main road up to the suit A schedule property is 85 feet. It is the mamool pathway to access to the suit A schedule property. There is no other access to reach the suit A schedule property from the said north-south main road. The plaintiff and her predecessors in title have been using the suit B schedule pathway for more than 30 years openly, continuously, uninterruptedly to the knowledge of the defendants without any let or hindrance and thereby, they have got an easement of necessity over the same.”

7.From the averments it is seen that the width of the pathway is mentioned as four feet, length is 85 feet. The road runs North to South. It is situated on the west. In the schedule the width is mentioned as 4 feet on East-West and length is mentioned as 85 feet and apart from that it is mentioned that the pathway runs East west from the North South



C.R.P.(MD)Nos.1150 & 1151 of 2024

Panchayat Road. Along with plaint a sketch is also annexed. So it is clearly indicated that even though in the plaint averments, description of 'B' schedule property is properly stated, but not in the schedule. Now, the technical objection was made by the revision petitioner stating that this does not satisfy the requirement of law as mandated under Order 6 Rule 17. According to him, the petitioner averment does not indicate that in spite of their due diligence the mistake occurred. But, they have admitted that it is a mistake. According to him, a negligent act could not be encouraged and permitted. For the negligence they have to suffer. To that he would rely upon the Judgment of the Honourable Supreme Court made in the case of *J.Samuel and Others Vs. Gattu Mahesh and others* reported in *2012 (1) Supreme Court 568*.

8.Per contra the respondent relied upon the following Judgments

- (i) The Judgment of the Honourable Supreme Court in the case of *Peethani Suryanarayana and another Vs. Repaka Venkata Ramana Kishore and others* reported in *(2009) 11 SCC 308* and
- (ii) The Judgment of this Court in the case of *B.Dheenadhayabaran Vs. Rathna Vel* made in CRP(NPD)(MD).No.807 of 2012.



C.R.P.(MD)Nos.1150 & 1151 of 2024

WEB COPY

9.The opening paragraph of the discussion will fix the issue. It is nothing but a typographical mistake committed in the schedule. There is no issue between the parties with regard to the identification of the property. The property was identified by the Commissioner. He filed the report that was also considered by the trial court for passing the Judgment and Decree. So, I find that it is nothing but a clerical mistake, which occurred in the schedule of property. It does not affect the ultimate conclusion reached by the trial Court. In fact as mentioned above the identity of the property was not under dispute. The parties were not at the issue. So it is apparent that it is nothing but a drafting mistake, for which the parties should not be penalized. The judgments cited by the revision petitioners have no bearing upon the petition. So both the revisions are liable to be dismissed.

10.Accordingly, both civil revision petitions are dismissed confirming the orders passed by the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2025



C.R.P.(MD)Nos.1150 & 1151 of 2024

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

To

1.The Principal District Munsif, Karur.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P.(MD)Nos.1150 & 1151 of 2024

G.ILANGO VAN,J.

TM

C.R.P.(MD)Nos.1150 & 1151 of 2024

30.01.2025