



C.R.P.(MD).Nos.724 and 725 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	24.08.2023
Pronounced on	21.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) Nos.724 and 725 of 2020

&

C.M.P.(MD)Nos.4841 and 4843 of 2020

N.Rajadurai

... Revision Petitioner in
both CRPs

Versus

1.Benadict

2.Cherupushpam

3.Lissy

4.Jose

5.Gracy

6.Sisil Joy

1/23



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7.Sathiyadhas

8.Thankammal

9.Joy

10.Dennis

11.James

12.Singh

13.Prema

14.Vijaya

15.Annamma

16.Mony

17.Pethalis

18.Dennis

19.Mohan

20.Anchali

21.Nelson

22.Rani

23.Devasahayam

2/23



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24.Yesudasan

25.Dhasamma

26.Maria Thankam

27.Maria Sebastian

28.Gabrian

29.Nesam

30.Titus

31.Justus

32.Devadas

33.Swamidas

34.Antony

35.Mary Rajammal

36.Bino

37.Syras

38.Thomas

39.Simon

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40.Rajendran

41.Thankaraj

42.Pathalese

43.Sundara Raj

44.Pushpam

45.Baby

46.Alphonsal

47.Selvi

48.Ponnammal

49.Gomathi

50.Ganesan

51.Suseela

52.Raveendran

53.Thiraviam

54.Saraswathi

55.M.Vadivel Asari

56.Retnam

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57.Thampiraj

58.Pusparaj

59.Soosai Michael

60.Siluvai Rajan

61.Mary Gnanaselvam

62.Anand Prakash

63.Jini

64.Jeya

65.Thankam

66.Chellam

67.Stanly

68.Dennison

69.Stalin

70.Ranna Hentry Nayagam

71.Hector

72.Karnaly

5/23



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73.Thenmozhi

74.Lissy

75.Vanitha

76.Pushpam

77.Thankavadivu

78.Raja

79.Rajakumar

80.Mohan

81.Rajasekar

82.Raja Singh

83.Victor

84.Johnson

85.John Simon

86.Thomas

87.Johnraj

88.Ayyappan

89.Vijaya

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90.Murugan

91.Krishna Pillai

92.Mathias

93.Jeyapaul

94.Arulldhas

95.Gracy

96.Mary

97.Thangam

98.Allibha

99.Christu Raja

100.Ravi

101.Gilda

102.Ajimon

103.Vinu Karthie

104.Anish Kumar

105.Titus Joseph

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106.Sunitha

107.Jegan

108.Qubert

109.Reegan

110.Vijaya

... Respondents in
both CRPs

Prayer in CRP.(MD)No.724 of 2023: The Civil Revision Petition is filed under article 227 of the Constitution of India, to set aside the docket order, dated 02.03.2020 recording the order of delivery and terminating the E.P.No.29 of 2019 in O.S.No.355 of 1979 on the file of the District Munsif Court, Padmanabhapuram.

Prayer in CRP.(MD)No.725 of 2023: The Civil Revision Petition is filed under article 227 of the Constitution of India, to set aside the Amin report, dated 28.02.2020 effecting delivery in E.P.No.29 of 2019 in O.S.No.355 of 1979 on the file of the District Munsif Court, Padmanabhapuram.

For Revision Petitioner : Mr.M.Saravanan for
(in both CRPs) M/s.N.Ashok Padmaraj

For Respondents : Mr.S.C.Herold Singh for R6
(in both CRPs) : No Appearance for R2, R4 and R5



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COMMON ORDER

These Revisions are preferred as against the docket order dated 02.03.2020 recording the order of delivery and terminating the E.P.No.29 of 2019 in O.S.No.355 of 1979 on the file of the District Munsif Court, Padmanabhapuram and to set aside the Amin report, dated 28.02.2020 effecting delivery in E.P.No.29 of 2019 in O.S.No.355 of 1979 on the file of the District Munsif Court, Padmanabhapuram.

2. According to the Revision Petitioner, the Amin report dated 28.02.2020 and consequential order of terminating the EP are illegal and unsustainable. It is submitted that the Court below mechanically ordered delivery when the Amin has filed the report on 21.01.2020 stating that a 3rd party has constructed a building in the suit land. While so, the decree holder has to file an application under Order 21 Rule 97 of Code of Civil Procedure for removal of obstruction. Without the said application, the decree holder



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cannot proceed further in the Execution Petition.

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3. Moreover, the Amin was incorrect in mentioning in his report that the neighboring property belong to the Petitioner and recorded paper delivery. The Executing Court ought not to have terminated the EP by recording the report of the Amin, which is per-se illegal and unsustainable. The description of the property allotted to the respondents 1 to 6 in the Advocate Commissioner's report does not convey any meaning. The decree itself is inexecutable. Therefore, the docket order passed by the Executing Court recording the delivery and terminating the EP is unsustainable under law and liable to be set aside.

4. The revision petitioner in his affidavit has stated that he had purchased 2 cents of land in R.S.No.612/4 at Midalam Village, Karungal Taluk, Kanyakumari District from one Ramanathan by a registered sale deed dated 29.07.2005. He purchased another one cent to the extent of 680 Sq. meters in R.S.No.612/4 and 264 Sq. meters in R.S.No.612/5A in the same

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village from one Rana Hendry and her children by way of registered sale deed dated 19.05.2006. Further, he also purchased 2 cents in R.S.No.612/5A in the same village by way of registered sale deed dated 09.07.2014 from one Wilson. The petitioner's mother Muthupillai has settled 26.96 square meters of land in S.No.612/4A2 and 313.72 square meters of land in S.No. 612/5A1A by way of registered settlement deed dated 26.03.2015. The above items are contiguous lands and in total the petitioner is having 5.66 Ares of lands in the subdivision of 4 and 5 of S.No.612. The authorities have issued Patta No.14192 to the petitioner. The Petitioner is enjoying the above lands by mutating the revenue records. Since the Petitioner is working in Bahrain, he had appointed an Advocate as Power Agent to maintain the property.

5. The petitioner would submit that he came to know that on 28.02.2020 at about 10.00 a.m., the Court Amin entered into the above property and started to measure the same in pursuant to the Warrant issued to him in E.P.No.29 of 2019 by the learned Principal District Munsif,

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Padmanabhapuram. The above E.P.No.29 of 2019 was filed by the Respondents 1 to 6 herein for taking delivery of 4-1/2 cents in S.No.3174 and 3175 of Midalam village as per the Advocate Commissioner's Report attached with the final decree dated 19.08.2019. The Advocate Commissioner has allotted the following portions to the Respondents 1 to 6 ;

(i) That O1 G1 H1 J1 K1 N1 O1 plot having an extent of 2 cents in R.S.No.612/4.

(ii) That 'F1 G1 H1 J1 I1 F1' plot having an extent of 1.780 cent in R.S.No.612/5A and

(iii) That N1 K1 L1 M1 N1 plot having an extent of 0.720 cents as noted in the plan.

6. The Advocate Commissioner has referred the corresponding Re-Survey Numbers in his report and plan. As per the Advocate Commissioner's Report 2 cents in Old S.No.3174 and New R.S.No.612/4 marked as 'O1, G1, H1, J1, K1, N1 and O1' and 1.780 cents in Old S.No. 3175 and new R.S.No.612/5A marked as 'F1, G1, H1, J1, I1, F1' and another

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0.720 cents marked as 'N1, K1, L1, M1 and N1' was allotted to the Respondents 1 to 6.

7. The Petitioner further submits that his lands are situated on the western side of the lands allotted to the Respondents 1 to 6 herein. On enquiry, he learnt that the property allotted to the Respondents 1 to 6 were occupied by some third parties and they have put up construction in the same. On 21.01.2020, when the Amin attempted to take delivery, he noted the construction made by some third party and hence he returned the Warrant by praying the Court to pass suitable orders to demolish the compound wall put up by the third party in the subject land. The Respondents 1 to 6 are well aware of the fact that the property purchased by the Petitioner is entirely different from the property allotted to their share. As third party has put up construction in the area allotted to the Respondents 1 to 6 and removing the same would take several years, the Respondents 1 to 6 have devised a plan and with the active collusion of the Amin, have taken delivery of the Petitioner's property, which is situated on the western side of



the subject property. The act of the Amin is ex-facie, illegal and sustainable.

The Petitioner learnt that his lands are kept vacant. While so the Amin has illegally marked his lands as the lands allotted by the Advocate Commissioner to the Respondents 1 to 6 and granted paper delivery.

8. It is submitted that the Petitioner has appointed a power agent who filed an Obstruction Application before the Executing Court on 04.03.2020. However, the same was returned by the Executing Court stating that delivery was recorded and EP was terminated on 02.03.2020. Hence, the present Civil Revision Petitions have been preferred challenging the Amin's report and order of Executing Court.

9. On the other hand, the learned counsel for the 6th respondent would submit that in pursuant to passing of the final decree the respondents filed E.P.No.29 of 2019 in O.S.No.355 of 1979 for execution of the final decree and accordingly, the Amin conducted local inspection identified and delivered the property as per the Advocate Commissioner's report. Thereafter, based on the report of the Amin the Executing Court recorded



delivery and terminated the E.P. Therefore, there is no infirmity found in the report of the Amin and in the order passed by the Executing Court. Hence, the above revision petitions are devoid of merits and liable to be dismissed.

10.I have considered the submissions made on either side and perused the records.

11.Chronology of events are as follows:

The suit for partition was filed in O.S.No.355 of 1979 in which a preliminary decree was passed. Pursuant to the passing of preliminary decree, final decree was also passed on 19.08.2019. Thereafter, the respondents filed the execution petition in E.P.No.29 of 2019 for executing the final decree as per the report of the Advocate Commissioner who inspected the suit property and demarked the shares of the respective sharers. In the Execution Petition, delivery was ordered on 11.11.2019 and delivery warrant was issued to the Court Amin. On perusal of records, it is seen that on 21.01.2020, the Amin has filed a report stating that a 3rd party



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has put up construction in the suit land and prayed for suitable orders for removing the obstruction. The report of the Amin dated 22.01.2020 is extracted as here under:

13.01.2020 ம் தேதி வாதியோடும், முரசுகாரனோடும் பட்டிகை சொத்துக்களை ஒழிப்பிக்க போனதில் வாதிகளுக்கு ஒதுக்கப்பட்ட இடத்தில் காம்பவுண்ட் சுவர் கட்டப்பட்டு Gate போட்டு Gate பூட்டப்பட்ட நிலையில் இருந்தது. பிரதிகளும், பிரதிகளின் ஆட்களும் பல தாக்கங்களை சொல் ஒழிப்பிக்க விடாமல் தடங்கல் செய்தார்கள். எனவே, பட்டிகை சொத்தை ஒழிப்பிக்க பூட்டு உடைக்க காம்பவுண்ட் சுவரை இடிக்க உத்தரவும் காவலர் உதவியும் அளித்து உதவுமாறு மிகவும் கேட்டுக்கொள்கிறேன். எனவே, கட்டளையும் செலவாகாத படி ரூ.30/ நீதிமன்றத்தில் ஒப்படைக்கிறேன்.

To break open and want of police help

SB Sd/-

Delivery not effectually

Unspent Rs.30/-

S.B.2



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22.1.20

Delivery not effectually

T.Vijah

However, without any application under Order 21 Rule 97 CPC by the decree holder by removal of obstruction, the delivery warrant was re-issued to the Amin. On petition, the police aid and break open was ordered. On 02.03.2020 based on the Amin's report the executing Court recorded delivery and in view of the same, the E.P was terminated. The Obstruction Petition filed by the revision petitioner was returned by the Executing Court stating that delivery was effected and recorded. The above order of the Executing Court and the Amin's report is under challenge before this Court.

12.The contention of the revision petitioner is that in the Amin's report dated 21.01.2020 it was mentioned that a third party has put up construction in the suit land and sought for suitable orders from the Executing Court for removal of the construction. Whereas, on 02.03.2020

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the Amin has reported that delivery was effected and the same was also recorded by the Executing Court. The contention of the revision petitioner is that the petitioner has purchased 2 cents of land in R.S.No.612/4 at Midalam Village, Karungal Taluk, Kanyakumari District from one Ramanathan by a registered sale deed 29.07.2005 and purchased to the extent of 680 sq. meters land in R.S.No.612/4 and 264 Sq. meter land in R.S.No.612/5A in the same village from one Rana Hendry and her children by way of registered sale deed dated 19.05.2006. the petitioner would further state that he had also purchased in 2 Cents in R.S.No.612/5A in the same village by way of registered sale deed dated 09.07.2014 from one Wilson. The petitioner's mother Muthupillai has settled 26.96 sq. meter of land in S.No.612/4 A2 and 313.72 meters of land in S.No.612/5A 1A by way of registered settlement deed dated 26.03.2015. the above properties are contiguous land and in total, the petitioner is having 5.66 Ares of land in the subdivision of 4 and 5 of S.No.612. The revenue Authorities have issued patta No.14192 to the petitioner. The petitioner is in possession and enjoyment of the above mentioned lands by mutating the revenue records. Since the petitioner is



working abroad appointed an Advocate as power agent to maintain his properties. While so, on 28.02.2020 at about 10.00a.m the Court Amin entered into his property, which is situated on the western side of the lands allotted to respondents 1 to 6 by the Advocate Commissioner, took delivery of the petitioner's property. Since, third party has put up construction in the property allotted to R1 to R6 the Amin illegally marked the lands of the petitioner as the lands allotted by the Advocate Commissioner to the respondents 1 to 6 and granted paper delivery. Hence, the power agent of the petitioner filed an Obstruction petition before the Executing Court which was returned stating that delivery was ordered and E.P was terminated on 02.03.2020. The petitioner would submit that he had kept his land vacant. While so, when the earlier report of the Amin indicates about a compound wall, it is surprising that how delivery was effected without any order for demolishing the said compound wall. Moreover, from the submission made by the revision petitioner it is understood that the Amin had delivered only a vacant land, which according to the petitioner, the said land belongs to him. The Executing Court ought to have entertained the Obstruction Petition filed



by the petitioner when there is a cloud in identifying the property. Without making an effort to find out whether the properties claimed by the revision petitioner formed part of the decree schedule, ought not to have returned the Obstruction Petition filed by the petitioner. Now, the question arise whether after closing the execution proceedings recording full satisfaction of the decree, can it be reopened by filing an Obstruction Petition. The provisions in Order 21 of the Court laid down a complete code for resolving all disputes pertaining to execution of the decree for possession and remedy of the parties concerned is to have their grievance once and for all finally resolved in the execution itself. Therefore, the return order of the Executing Courts by stating that after recording delivery of the property and terminating the E.P in pursuant to the execution of decree, the Obstruction Petition cannot be entertained is legally unsustainable. What is remaining is the disputes relating to identity of property. According to the revision petitioner, the property delivered to the respondents 1 to 6 belongs to him. Where as, the contention of the respondents is that as per the Advocate Commissioner's report, the properties allotted to R1 to R6 were delivered in



their favour. Therefore, the same requires adjudication by appointing an Advocate Commissioner with the help of surveyor to assert that the property has been correctly identified with reference to the survey demarcations and documents and decide whether it formed part of decree scheduled property.

13.In the result, these civil revision petitions are allowed in the following lines. The return order of the Executing Court in the Obstruction Petition and the Amin report is set aside. The Executing Court is directed to number the Obstruction Petition and dispose the same on merits. It will be open to the petitioner to seek a review of the order dated 02.03.2020 recording delivery in E.P.No.29 of 2019 and terminating the E.P.

14. The review petitioner shall request the Executing Court to depute an Advocate Commissioner if necessary with the assistance of surveyor to identify the property in dispute and the Executing Court shall decide whether it formed part of decree scheduled property.

15.Needless to say that the respondents/plaintiffs will get an



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opportunity to raise their objections to the Obstruction Petition in the event of its filing by the revision petitioner.

16.The Executing Court shall conduct enquiry on the Obstruction petition and pass appropriate orders as circumstances warranted within a period of four weeks.

17.With the above directions, the civil revision petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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mkn2/vsn

Index:Yes/No

Speaking Order : Yes/No

Note: Registry is directed to return the original impugned order after retaining the photo copy of the same.

K.GOVINDARAJAN THILAKAVADI,J.

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COMMON ORDER MADE IN

C.R.P.(MD) Nos.724 and 725 of 2020
&
C.M.P.(MD)Nos.4841 and 4843 of 2020

21 .12.2023