



C.R.P.(MD)No.1522 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 06.12.2023

Delivered on : 08.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1522 of 2022

and

C.M.P.(MD)No.6489 of 2022

1.P.M.Jeyapandi

2.J.Mahalakshmi

: Petitioners/Respondents/
Respondents/Defendants

Vs.

M.Mahendran

: Respondent/Petitioner/
Petitioner/Plaintiff

Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order passed in E.A.No.1 of 2022 in E.P.No.8 of 2020 in O.S.No.2 of 2018 on the file of the Sub Court, Periyakulam, dated 14.07.2022.

For Petitioners : Mr.H.Arumugam

For Respondent : Mr.V.George Raja,
for M/s.Ajmal Associates.



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ORDER

The Civil Revision Petition is directed against the order passed in E.A.No.1 of 2022 in E.P.No.8 of 2020 in O.S.No. 2 of 2018, dated 14.07.2022 on the file of the Sub Court, Periyakulam.

2. The respondent in the revision petition as plaintiff has filed the suit in O.S.No.2 of 2018, for declaration of title to the suit property and for recovery of possession.

3. It is evident from the records that the suit, after full trial, was decreed as prayed for, vide judgment dated 14.11.2019 and thereby, declaring that the plaintiff is the absolute owner of the suit property and directed the defendants therein/revision petitioners to vacate the suit property and hand over the possession of the same to the plaintiff within two months from the date of judgment; that since the decree was not complied with, the decree holder has laid the execution petition in E.P.No.8 of 2020, seeking delivery of the suit property; that the revision petitioners/respondents have filed a counter statement to the execution



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petition raising objections that the defendants' house property is situated in S.No.1854/3 and the same has no connection whatever with the suit property situated in S.No.1854/1 and that the Executing Court by referring the objections raised by the revision petitioners and by observing that the merits of the objections can only be gone into at the time of taking delivery of the suit property and the same cannot be gone into at that stage, ordered for delivery.

4. It is not in dispute that after passing of the order for delivery, the decree holder has filed the above application under Section 47 of C.P.C., seeking orders to amend the description of the property given in the execution petition.

5. The case of the decree holder is that the second defendant has executed a settlement deed in respect of the suit property to her son Sukumar, dated 12.06.2020, stating that the suit property in S.No.1854/1 was then sub-divided into 2626/1 and the present S.No.2626/14, which is measuring the extent shown in the plaint; that subsequently the second defendant has executed rectification document to his son Sukumar, stating



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that S.No.1584/1 is mentioned instead of S.No.1854/3 that the second defendant has obtained patta in her name to the property bearing old S.No.2626/1 and new S.No.2626/14; that the defendants have been doing the above, with sole intention to cheat the decree holder and to commit a fraud and that therefore, it has become just and necessary to amend the description of the property given in the execution petition showing the new and old survey numbers.

6. The defendants/judgment debtors have filed a counter affidavit raising serious objections to the proposed amendment.

7. The learned Executing Judge, after enquiry, has passed the impugned order, dated 14.07.2022, allowed the proposed amendments. Aggrieved by the impugned order allowing the amendment petition, the judgment debtors have preferred the present revision.

8. At the outset, it is necessary to refer the property described as the suit property in the plaint and also in the decree dated 14.11.2019.



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DESCRIPTION OF THE PROPERTY

“பெரிய குளம் ரிடி, பெரிய குளம் 1 எண் இணை சார்பதிவாளர் அலுவலகம், பெரிய குளம் தாலுகா, மேல்மங்கலம் கிராமம், முதலக்கப்பட்ட பஞ்சாயத்து எல்லைக்குட்பட்ட நத்தம் சர்வே 1854 /1 நம்பரில் கட்டுப்பட்ட காலியிடத்திற்கு நான்கு மால்.

வடக்கு : மெயின் ரோடு

கிழக்கு : பாண்டி இடம்

தெற்கு : அரசாங்க இடம்

மேற்கு : சாரதா, கோமிநாத் இடம்

இம்மாலில் கிழமேலடி 50, தென்வடலடி 45க்கு சதுரடி 2,250 க்கு சதுரமீட்டர் 209.10 உள்ள காலியிடமும், மேற்படி இடத்திற்குண்டான சகல பாதைப் பாத்தியங்களும் உள்பட சர்வடக்கம்.”

9. Moreover, the decree holder in the execution petition in E.P.No.8 of 2020 has also shown the very same property, which was sought to be delivered in pursuance of the decree. But the decree holder, in the petition filed in E.A.No.1 of 2022 for amending the execution petition has given the description of the property as the proposed amendments.



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“ Amend the particulars as given below

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In description of the property – ல் நத்தம் சர்வே 1854 /1 நம்பரில் மின் சர்வே நம்பர் 1854 /3 புதிய சர்வே நம்பர் 2626 /14 பழைய சர்வே நம்பர் 2626 /1 என்றும் மேற்படி சர்வே நம்பரில் ஆஸ்பிட்டாஸில் மேல் கோப்பு போடப்பட்ட செங்கல் சுவர் 200 சதுர அடியில் கட்டப்பட்ட வீடு current connection No.05533012543 என்பதை திருத்திக் கொள்ளப்படுகிறது.”

10. As rightly contended by the learned counsel for the revision petitioners, the plaintiff has been canvassing a case all along, that suit property is situated in S.No.1854/1, but now he wanted to amend the property shown in execution petition as if, the property is situated in S.No. 1854/3 with new S.No.2626/14, old S.No.2626/1 along with the house property constructed therein.

11. When the matter is taken up for hearing today, the learned counsel for the respondent/plaintiff would submit that the plaintiff/deGREE holder has now decided to retain his earlier stand that the suit property is situated in S.No.1854/1 and that he is not pressing the amendments. He would further submit that the Executing Court may be directed to proceed with the property shown in the plaint, decree and in the execution petition taking note of the four boundaries.



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12. As rightly contended by the learned counsel for the revision petitioners, in the description of the property shown in the plaint and subsequently in the execution petition, four boundaries were mentioned along with measurements.

13. The learned counsel for the revision petitioners has also raised an objection that the petition seeking amendments filed under Section 47 of C.P.C., is legally not maintainable.

14. Without going into the merits of the case put forth by the both parties, taking note of the submission made by the learned counsel for the plaintiff/decree holder that they are not pressing the proposed amendments and they are not having any objection for setting aside the order passed by the Executing Court in E.A.No.1 of 2022 and for proceeding with the execution proceedings in respect of the property already shown and also taking note of the submission made by the learned counsel for the revision petitioners that plaintiff has all along been canvassing the case that the suit property is situated in S.No.1854/1, this Court is inclined to allow the revision and thereby setting aside the fair and decreetal order passed in



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E.A.No.1 of 2022, dated 14.07.2022 by the learned Subordinate Judge,
Periyakulam.

15. In the result, the Civil Revision Petition is allowed and the impugned order, dated 14.07.2022 in E.A.No.1 of 2022 in E.P.No.8 of 2020 in O.S.No.2 of 2018 on the file of the Sub Court, Periyakulam, is set aside. The Executing Court is directed to proceed with the proceedings in respect of the property shown as suit property in the decree, dated 14.11.2019. No costs. Consequently, connected Miscellaneous Petition is closed.

08.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das



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To

- 1.The Subordinate Judge,
Periyakulam.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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and
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Dated : 08.12.2023