



C.R.P(MD)No.686 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.686 of 2024

and

C.M.P.(MD)No.3476 of 2024

K.Subramaniam (Died)

1.Mookkammal (Died)

2.Selvaraj

3.Murugalakshmi

... Petitioners/Respondents 1, 2 and 3/
Defendants 2 and 3

vs.

A/m. Chockkalingasamy Koil Devasthanam,
Vembakottai,

Rep. by its Managing Trustee

S.Muthukrishna Thevar

... Respondent/Petitioner/Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 06.01.2024 passed in E.A.No.03 of 2023 in E.P.No.02 of 2019 in O.S.No. 197 of 1988 on the file of the District Munsif of Sivakasi.

For Petitioner : Mrs.P.Jessi Jeeva Priya

For Respondent : Mr.P.Mahendran



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ORDER

The Civil Revision Petition is directed against the order dated 06.01.2024 passed in E.A.No.3 of 2023 in E.P.No.2 of 2019 in O.S.No.197 of 1988 on the file of the District Munsif of Sivakasi.

2.The respondent/decree holder herein had originally filed O.S.No.197 of 1988 on the file of the Additional District Munsif, Sattur. The prayer was to declare that the plaintiff Devasthanam is the owner of the property and directing the defendants to quit and deliver possession to the plaintiff temple and also for mesne profits etc. The suit was originally dismissed by a judgment and decree dated 12.01.1990. As against the same, the plaintiff filed an appeal suit in A.S.No.121 of 1990 on the file of the Sub Court, Srivilliputhur. By a judgment and decree dated 25.07.1994, the appeal suit was allowed and the suit was decreed as prayed for. The aggrieved defendants further filed Second Appeal No.1391 of 1994 and by a judgment dated 27.10.2006, the second appeal stood dismissed and the judgment and decree of the First Appellate Court was confirmed. In order to execute the same, the present execution petition in E.P.No.2 of 2019 is



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filed. When the delivery warrant was issued, the Court bailiff visited the site and made the following endorsement:

“பெய்லீப் ரிட்டன்

07/02/2024ந் தேதி சமூக கோர்ட் உத்தரவுபடி எழுதிய அவிடவிட். இந்நீர் கட்டளையில் கண்ட எதிர்ப்புதாரர்கள், மனுதாரருடன் ஹை விலாசத்தில் நேரில் சேன்று விசாரித்தபோது 2ம் எதிர்ப்புதாரர் இறந்துவிட்டதாகவும், 3, 4ம் எதிர்ப்புதாரர்கள் ஆஜரில் இல்லாததால் ஹை ஒப்படைப்பு சொத்தை பார்வையிட்ட போது க.எண்.1/309 டீக்கடையாகவும், க.எண்.1/310 இடிந்த நிலையில் ஆஸ்பெட்டாஸ் செட்டாகவும் இருந்தது. ஹை க.எண்.1/309 டீக்கடையில் 3ம் எதிர்ப்புதாரரின் தம்பியான சூர்யராஜ் என்பவர் இருந்தார். அவரிடம் ஒப்படைப்பு கட்டளை விபரம் எடுத்துக் கூறி சொத்தை ஒப்படைப்பு செய்ய கூறிய போது அவருடைய சகாக்களுடன் சொத்தை ஒப்படைப்பு செய்யவிடாமல் தடுத்து கலகம் செய்ய முற்பட்டதால் ஹை சொத்தை ஒப்படைப்பு செய்ய இயலாததாலும் ஹை சொத்தை ஒப்படைப்பு செய்வதற்கு கிராம நிர்வாக அலுவலர், சர்வையர், காவலர்கள் உதவி தேவைப்படுவதாலும், ஹை சொத்தை ஒப்படைப்பு செய்ய இயலாத காரணத்திற்கு மனுதாரரிடம் சாட்சி கையெழுத்து வாங்கியும், அத்தாட்சியுடன் கட்டளையை ரிட்டன் செய்கிறேன் என உறுதியாக கூறுகிறேன்.”

The decree holder has now filed to amend the door number which was originally mentioned in the schedule as 1/135A as 1/309 and 1/310. The said amendment was allowed by the Executing Court. As against which, the judgment debtors have come on revision.

3.Mrs.Jessi Jeeva Priya, the learned counsel appearing on behalf of the petitioners would submit that the decree holders have to go only by



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the decree and cannot include a new door number and execute the decree.

According to her, the properties in new door numbers are different properties and in the guise of the executing the earlier decree, now possession is sought to be taken with reference to the Government Poramboke land, which is not part of the decree property. As far as the Government Poramboke land is concerned, government being the predominant title holder had permitted the defendants to reside. Therefore, that portion of the land cannot be taken possession by the decree holder by trying to make an innocuous amendment of door number.

4.Per Contra *Mr.P.Mahendran*, the learned counsel appearing on behalf of the respondent/decreed holder would submit that even the tea shop and the other superstructure is mentioned in the Appellate Court judgement. The door number has since subsequently been changed, and therefore it is only an innocuous amendment, which is sought to be brought in the decree. The same having been allowed by the trial Court after due consideration of the evidence on record, this Court need not interfere.



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5.I have considered the rival submissions made on either side and perused the material records of the case.

6.As a matter of fact, upon dismissal of the second appeal on 27.10.2006, the decree passed by the First Appellate Court has become final. The decree is one of declaring the right of the petitioner/plantiff Devasthanam with reference to the suit schedule property and for consequential decree of ejectment of the defendants. Therefore, the decree holder Devasthanam is entitled to get possession of the property which is described in the suit. Upon, perusing the judgment and decree of the appeal suit, dated 25.07.1994, in the decree, it is mentioned that schedule is as per the trial Court's decree. Then upon perusal of the trial Court decree, the following schedule, which is mentioned:

“SCHEDULE OF PROPERTY

Building bearing Door No.1/135 A Vembakottai Village, Sivakasi Sub Registration District, Sattur Taluk, bounded on the west by Temple property, on the south by Temple Building, on the north by temple building occupied by Kandasamy Naicker, on the east by Sivakasi to Kazhugumalai Road, measuring east to west 16 yards south to north 8 ½ yards mud building with filed shed.”



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Therefore, it is clear that the temple is entitled for possession of the property admeasuring East to West 16 yards and South to North 8 ½ yards, which is surrounded on the south by the temple building itself and on the north by the temple building occupied by one Kandasamy Naicker and on the East by Sivakasi to Kalugumalai Road and on the west by remaining temple property. Therefore, when the four boundaries and the linear measurements are clear and categorical in the schedule, there is no question of amendment of door number.

7.If door number is considered to be essential for executing a decree, in our country, no decree can be executed. The door numbers will keep on changing and sometimes the parties also do the mischief by changing the door number. In this case, it is alleged that because of the efflux of time, the municipality has changed the door numbers. The same is contested by the petitioners herein. Be that as it may, I hold that the very amendment sought for the plaintiff itself is unnecessary. The Executing Court is directed to go by the linear measurements and four boundaries and accordingly, issue a warrant to the bailiff and the bailiff has to go to the



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spot and has to identify the property and take delivery of the property and not to find reasons to return the warrant.

8. Accordingly, the Civil Revision Petition is disposed of. In view of the fact that the suit started in the year 1988, the Execution Court is requested to proceed further with the original schedule itself and with the linear measurements and the boundaries alone and the effect delivery of the property accordingly. The proceedings shall also be expedited and can be taken up on day-to-day basis as far as possible. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2024

NCC : Yes
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To

The District Munsif of Sivakasi.



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D.BHARATHA CHAKRAVARTHY, J.

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