

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 16.10.2015**

**CORAM :**

**THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN**

**C.R.P.(NPD) No.4102 of 2015**

K.Palanisamy

..... Revision Petitioner/Judgment Debtor

**Vs.**

T.Sasikumar

..... Respondent/Decree-holder

Revision petition has been filed against the fair and decreetal order dated 04.08.2015 made in E.A.No.33 of 2015 in E.P.No.58 of 2010 in O.S.No.241 of 1998 on the file of the Sub Court, Gobichettipalayam.

For Revision Petitioner : Mr.N.Manoharan

For Respondent : Mr. R.T.Doraisamy

**ORDER**

Revision petitioner is the defendant in O.S.No.79 of 2015, on the file of the Principal Sub Court, Gobichettipalayam. The respondent herein is the plaintiff in the aforesaid suit. It is a suit for specific performance. The suit was decreed by the trial Court on 22.10.2003. No appeal was filed as against the order and the decree obtained finality. Whiles, the respondent/plaintiff filed E.P.No.58 of 2010 for execution of the decree. Accordingly, a sale deed

was executed through Court on 31.01.2011 and the same was registered as Doc.No.405 of 2011 on 31.01.2011 on the file of the Joint-I Sub Registrar, Gobichettipalayam.

2. The said registered sale deed was also produced before the executing court. Thereafter, the respondent/plaintiff filed E.A.No.33 of 2015 in E.P.No.58 of 2010, for delivery of possession. The Executing Court allowed the E.A.No.33 of 2015 in E.P.No.58 of 2010 in O.S.No.241 of 1998, rejecting the plea taken by the revision petitioner that the revision petitioner is entitled only 1/9th share in the property for which, the sale deed was executed. The Executing Court rejected such plea of the revision petitioner placing reliance on the suit in O.S.No.79 of 2015 filed by the mother of the revision petitioner on the file of the Sub Court, Gobichettipalayam, for partition. Questioning the aforesaid order, this revision is filed.

3. Heard both sides.

4. The aforesaid facts are not disputed. That is, the suit in O.S.No.241 of 1998 for specific performance was decreed on 22.10.2003 and the same attained finality. It is also not in dispute that E.P.No.58 of 2010 was filed by the respondent/plaintiff and no counter affidavit was filed by the revision

petitioner taking all these pleas. Thereafter, an order was passed for execution of sale deed through Court and accordingly, a sale deed was executed on 31.01.2011. Whiles, after the execution of the sale deed, the respondent/plaintiff filed E.A.No.33 of 2015, for delivery of possession. Only at this stage, the revision petitioner has come with a plea that he is entitled only for 1/9th share in view of the partition suit filed by his mother in O.S.No.79 of 2015 on the file of the Sub Court, Gobichettipalayam.

5. I am of the view that the executing Court has correctly rejected the plea stating that the revision petitioner is estopped from raising such a plea. In view of the aforesaid developments, I do not find any error with the reasoning given by the Executing Court. Hence, I do not find any reason to interfere with the order of the Court below. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**16.10.2015**

Index : Yes/No  
Internet : Yes/No  
smi

To  
1.The Sub Court, Gobichettipalayam

**D.HARIPARANTHAMAN, J.**

Smi

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