

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.4599 of 2015 &
M.P.No.1 of 2015

S.Gajalakshmi

... Petitioner

v.

S.Govindasamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 06.11.2015 passed in E.A.No.84 of 2015 in E.A.No.31 of 2011 in E.P.No.140 of 2008 in O.S.NO.169 of 1977 on the file of District Munsif Judge at Ambattur.

For Petitioner : Mr.D.S.Ramesh

O R D E R

Challenging the fair and final order passed in E.A.No.84 of 2015 in E.A.No.31 of 2011 in E.P.No.140 of 2008 in O.S.No.169 of 1977 on the file of District Munsif Court, Ambattur, the third party-petitioner has filed the above Civil Revision Petition.

2. Pursuant to the decree obtained in O.S.No.169 of 1977, the decree holder filed an Execution Petition in E.P.No.140 of 2008. In the said Execution Petition, the petitioner filed an application in E.A.No.31 of 2011 under Order 21, Rule 97 of CPC, to adjudicate his rights over the property as per law.

3. After contest, the Execution Court dismissed the application. Though the revision petitioner marked documents in E.A.No.31 of 2011, in the index portion, it has been mentioned as the revision petitioner has not filed any document.

4. Against the dismissal of the application in E.A.No.31 of 2011, the revision petitioner filed an appeal, which according to the learned counsel for the petitioner is pending.

5. Subsequently, the decree holder filed an application in E.A.No.84 of 2015 under section 152 of CPC to rectify the fair order by including the list of documents marked by the revision petitioner. The application filed by the revision petitioner was opposed by the revision petitioner.

6. The Execution Court, taking into consideration the case of both the parties, rightly allowed the application in E.A.No.84 of 2015.

7. It is not the case of the petitioner that he has not marked any document before the Execution Court. When he had marked the documents before the Execution Court, the Execution Court should have mentioned the list of documents marked on the side of the petitioner. Omission to mention the list of documents marked on the side of the petitioner is a clerical error. On a reading of the order passed in E.A.No.31 of 2011, it could be seen that Ex.A11 marked on the side of the petitioner was considered.

8. The learned counsel appearing for the petitioner submitted that the other documents marked by the petitioner were not considered by the Execution Court.

9. So far as non consideration of the documents marked on the side of the revision petitioner is concerned, it is a matter to be adjudicated before the Appellate Court in the appeal filed as against the fair order passed in

E.A.No.31 of 2011. So far as non mentioning of the document marked on the side of the petitioner is concerned, the same can be rectified under section 152 of CPC.

10. In these circumstances, in order to rectify the clerical mistake committed in the fair order passed in E.A.No.31 of 2011, the Execution Court has rightly allowed the application.

11. I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

10.12.2015

Rj

To

The District Munsif Court,
Ambattur.

M. DURAISWAMY,J.,

C.R.P.(NPD)No.4599 of 2015 &
M.P.No.1 of 2015

10.12.2015