

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1321 of 2014
and M.P.No.1 of 2014

N.Manivannan

... Petitioner

Vs.

1.M.S.Sivakumar

2.S.Prakash

3.K.S.Vijayakumar

4.S.Balraj

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order dated 03.02.2014 made in E.A.No.9 of 2014 in E.P.No.144 of 2012 in O.S.No.6936 of 2009 on the file of the Subordinate Court, Poonamallee.

For Petitioner : Mr.R.Thiagarajan, Senior Counsel
for Mr.G.Prakash

For Respondents : No appearance - R1 to R3

R4 - given up

ORDER

Challenging the order passed in E.A.No.9 of 2014 in E.P.No.144 of 2012 in O.S.No.6936 of 2009 on the file of the Subordinate Court, Poonamallee, the Decree Holder has filed the above Civil Revision Petition.

2. Though notices sent to the respondents were duly served and their names have been printed in the cause list, none appeared for the respondents.

3. Pursuant to the decree passed in O.S.No.6936 of 2009, the Decree Holder filed an Execution Petition in E.P.No.144 of 2012 to execute the decree. The Executing Court ordered delivery. Pursuant to the delivery ordered by the Executing Court, when the Bailiff went to the suit property for taking possession of the same, he was not in a position to take delivery for the reason that the boundaries of the property was not correctly mentioned in the warrant and therefore, he has filed a report stating that unless the Land Surveyor measures the property and identifies the same, he cannot execute the decree. Recording the same, the Bailiff had returned the warrant. Since a Surveyor was not appointed to measure the land and identify the same, warrant issued for taking delivery of possession could not be executed by the Bailiff. In the meantime, the 3rd parties, who are the respondents 1 & 2 herein, have filed an application in E.A.No.9 of 2014 to get themselves impleaded in the Execution Petition.

4. On a perusal of the report of the Bailiff, it could be seen that he has not mentioned about the proposed parties and he has filed his report stating that the boundaries of the property was not correctly mentioned in the warrant. Except saying that the boundaries are incorrectly stated in the delivery warrant, the Bailiff has not whispered a single word about the proposed parties in his report. When the decree was passed as against the respondents 3 & 4 herein, the respondents 1 & 2 cannot get themselves impleaded in the Execution Petition. The application was filed under Order 1 Rule 10 (2) of the Civil Procedure Code.

5. Mr. R. Thiagarajan, learned senior counsel appearing for the petitioner submitted that the proposed parties have also filed a separate suit in O.S.No.96 of 2012 on the file of the District Court, Thiruvallur for declaring their title over the suit property, to declare the execution proceedings in E.P.No.112 of 2010 on the file of the District Munsif, Poonamallee in respect of 'B' Schedule is without jurisdiction and to declare the proceedings in E.P.No.112 of 2010 as null and void.

6. If the proposed parties are in possession of the suit property, they could have filed an application under Order 21 Rule 97 of the Civil Procedure Code and not under Order 1 Rule 10 of the Civil Procedure Code. Having

filed a suit in O.S.No.96 of 2012 to declare the execution proceedings in E.P.No.112 of 2012 as null and void, the Execution Court ought not to have allowed the application and impleaded the proposed parties as respondents in the execution proceedings.

7.In these circumstances, the fair and decreetal order passed in E.A.No.9 of 2014 are liable to be set aside. Accordingly, the same are set aside. The Execution Court is directed to appoint a Surveyor to measure the suit property and thereafter, issue delivery warrant for taking possession of the same.

8.With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

15.07.2016

To

The Subordinate Court,
Poonamallee.

M.DURAIWAMY,J.
va

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