

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.1801 of 2014
and M.P.No.1 of 2014 in CRP No.SR.41009 of 2014
and MP No.1 of 2014 in CRP No.1801 of 2014

Kanniappan (since deceased)
R. Saroja (since deceased)

1. Sargunaraj
2. Dakshinamurthy
3. Nadagopal
4. Murali
5. Saravanakumar

... Petitioners

vs

1. Yusuff Sait
2. Smt.Arulmani
3. Lakshmanaswamy
4. Paneer Selvam
5. Valarmathi
6. Revathi (minor)
7. Sathishkumar (minor)
(Both represented by mother
and guardian Smt.Arulmani)

.... Respondents

Civil Revision Petition filed under Section 115 of the Civil
Procedure Code against the order and decretal order passed in

E.A.No.11 of 2014 (C.F.R.No.2688 of 2014) in E.P.No.30 of 1996 in O.S.No.104 of 1977 dated 13.02.2014 on the file of District Munsif Court at Coonoor, The Nilgiris.

For Petitioners : Mr.M.L. Ramesh
For R.1 : Mr.Srinath Sridevan
For R.2 to R.7 : No appearance

ORDER

Challenging the order passed in E.A.No.12 of 2014 in E.P.No.30 of 1996 in O.S.No.104 of 1977 on the file of District Munsif Court, Coonoor, Nilgiris, the judgment debtors have filed the above Civil Revision Petition.

2. The first respondent/plaintiff filed the suit in O.S.No.104 of 1977 for specific performance. After contest, the trial Court decreed the suit on 27.07.1978. On appeal, preferred by the defendants, the judgment and decree of the trial court was confirmed by this Court in A.S.No.46 of 1979 dated 29.08.1985. The defendants preferred an appeal as against the judgment and decree passed in A.S.No.46 of 1979 before the Division Bench of this Court in LPA No.28 of 1986 and

the Division Bench also confirmed the judgment and decree passed in O.S.No.104 of 1977 by its judgment dated 30.11.1989.

3. Subsequently, the plaintiff filed an Execution Petition in E.P.No.211 of 1983 for the execution of the Sale Deed and the Sale deed was also executed in his favour and the Execution Petition was closed on 02.01.1985. Thereafter, the plaintiff filed another Execution Petition i.e. E.P.No.30 of 1996 for delivery of possession. In the said Execution Petition, the Judgment Debtors filed an application in E.A.No.12 of 2014, seeking for appointment of Advocate-Commissioner to find out whether there exists 0.05 cents of land and houses constructed on 0.02-6/16 cents i.e., the houses bearing Door Nos.40, 45 and 46 of the petition mentioned premises described in the Execution Petition with the help of a qualified Engineer and Surveyor.

4. It is the contention of the Judgment Debtors that the decree was originally passed against them in respect of an extent of 0.07-6/16 cents of land together with three houses standing thereon and that, at present, there are six houses bearing Door Nos.40 to 46 standing in the said 0.07-6/16 cents of land.

5. The application, filed by the judgment debtors before the Executing Court was opposed by the plaintiff by stating that the decree was granted in his favour for an extent of 0.07-6/16 cents of land together with three houses standing thereon. After contest, the Executing Court dismissed the application, against which, the judgment debtors have filed the above Civil Revision Petition.

6. The learned counsel appearing for the petitioners/judgment debtors submitted that since there are six houses standing in the suit property, the Decree Holder is not entitled to pay the cost of all the properties and that they can take delivery of possession in respect of three houses. Further, the learned counsel submitted that the houses were constructed long back.

7. The trial Court as well as the appellate court considered the case of the defendants and rejected their case and decreed the suit in favour of the plaintiff. Earlier in the Execution Petition in E.P No.30 of 1996, the judgment debtors filed an application in E.A.No.112 of 2001 under Section 47 of the Civil Procedure Code and the same was struck off in CRP (NPD)No.3496 of 2001 by this Court on 16.04.2004.

8. On a reading of the order passed by this Court in CRP (NPD) No.3496 of 2001 on 16.04.2004, it could be seen that the defendants have not raised any dispute with regard to the number of houses standing in the suit property. The judgment debtors cannot raise new issues in a piece-meal manner as they have done in the present application.

9. When there is no dispute with regard to the extent of the land mentioned in the suit property i.e., 0.07-6/16 cents of land in R.S.No.808, the superstructure standing on the suit property is not relevant. The learned counsel appearing for the petitioner also produced the photograph of the house standing in the property and on seeing the photograph, it could be seen that the houses are in dilapidated condition.

10. As already stated, the suit was filed in the year 1977 and even after a lapse of 40 years, the plaintiff/decreed holder is not in a position to take possession of the property. The contentions raised by the judgment debtors in the application, filed before the Executing Court are being raised for the first time in the entire proceedings. The

M. DURAISWAMY,J.,

sr

Executing Court, taking into consideration of all these aspects, has rightly dismissed the application. I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and the same is dismissed. No costs.

17-11-2016

sr

Index:no
website:yes

To

The District Munsif Court at Coonoor, The Nilgiris.

CRP(NPD)No.1801 of 2014