

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos. 2129 & 2130 of 1998
& C.M.P.Nos.10546 & 10547 of 1998

R.Sulochana
Rep.by her
Power of Attorney
Ramasamy
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Guindy, Madras – 600 032.

.. Petitioner in
both CRPs.

Vs.

1.V.Sundar
2.Tilaka Joseph
3.Dorai Kabali

.. Respondents in
both CRPs.

सत्यमेव जयते

PRAYER: Civil Revision Petitions are filed under Section 115 of C.P.C, against the fair and decretal order dated 14.12.1995 made in I.A.Nos.1107 of 1991 and 1668 of 1992 in O.S.No.43 of 1986 on the file of the Subordinate Court, Poonamallee.

For Petitioner

: No Appearance
in both the CRP's

For R1 to R3 : Dismissed Vide Court Order
dated 08.02.2016
in both the CRP's

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 14.12.1995 made in I.A.Nos.1107 of 1991 and 1668 of 1992 in O.S.No.43 of 1986 on the file of the Subordinate Court, Poonamallee.

2. The petitioner is first defendant and respondents 1 and 2 are the plaintiffs, third respondent is the second defendant in O.S.No.43 of 1986 on the file of the Subordinate Court, Poonamallee. The respondents 1 and 2 filed the said suit for specific performance of agreement of sale dated 24.05.1982 registered as document No.1837 of 1982 and subsequently, supplemental agreement dated 02.08.1982. The petitioner filed written statement and additional written statement and is contesting the suit. Issues were framed on 14.02.1986. At that stage, the respondents 1 and 2 filed two applications in I.A.Nos.1107 of 1991 and 1668 of 1982 for amendment of prayer as detailed in the petitions.

3. According to the respondents 1 and 2, the agreement of sale was entered into for the sale of 6 acres 36 cents. At the time of filing the suit, there was a tentative proposal by the Government to acquire 1 acre 39 cents. In view of the same, the respondents 1 and 2 filed suit for specific performance in respect of 4 acres 67 cents only. The Government by notification dated 11.02.1987 acquired only 77 cents and not 1 acre 39 cents. In view of the same, the respondents 1 and 2 are entitled to further extent of 69 cents. The petitioner executed three sale deeds to the nominees of the respondents 1 and 2. In view of the same, boundaries originally given in the plaint to be amended incorporating the present boundaries and they have to pay the Court fee for 69 cents now claimed.

4. The petitioner filed counter affidavit and submitted that the respondents 1 and 2 also filed an application for the very same relief and the same was dismissed as withdrawn. The present claim for the very same relief is not maintained and is barred by the principles of resjudicata. The respondents 1 and 2 by amendment

are seeking to enlarge the extent of land and is introducing a new case and the boundaries given by them are not correct.

5. The learned Judge considering the fact that the respondents 1 and 2 originally filed suit for specific performance for lesser extent on the ground that there is a proposal by the Government to acquire 1 acre 39 cents, subsequently, the Government acquired only 79 cents and in view of the same, the first respondent is entitled to seek specific performance of 69 cents also, allowed both the applications.

6. Against the order dated 14.12.1995 made in I.A.Nos.1107 of 1991 and I.A.No.1668 of 1992, the present civil revision petitions are filed by the petitioner.

7. From the materials on record, it is seen that as per the agreement of sale, the petitioner agreed to sell 6 acres 36 cents to the respondents 1 and 2. The respondents 1 and 2 filed suit for specific performance of agreement of sale to an extent of 4 acres 67 cents only. In view of the fact that the Government acquired only 70 cents, the respondents 1 and 2 filed the present two applications for amendment of prayer as detailed in the petitions.

In view of the agreement executed by the petitioner to sell larger extent and the Government acquired only 70 cents of land not 1 acre 39 cents, the amendment sought for by the respondents 1 and 2 is valid. No prejudice will be caused to the petitioner. The petitioner is entitled to contest the suit in respect of the entire extent. The learned Judge considering all the above aspects allowed the applications by giving valid and cogent reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 14.12.1995.

8. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

29.08.2017

Index : Yes/No

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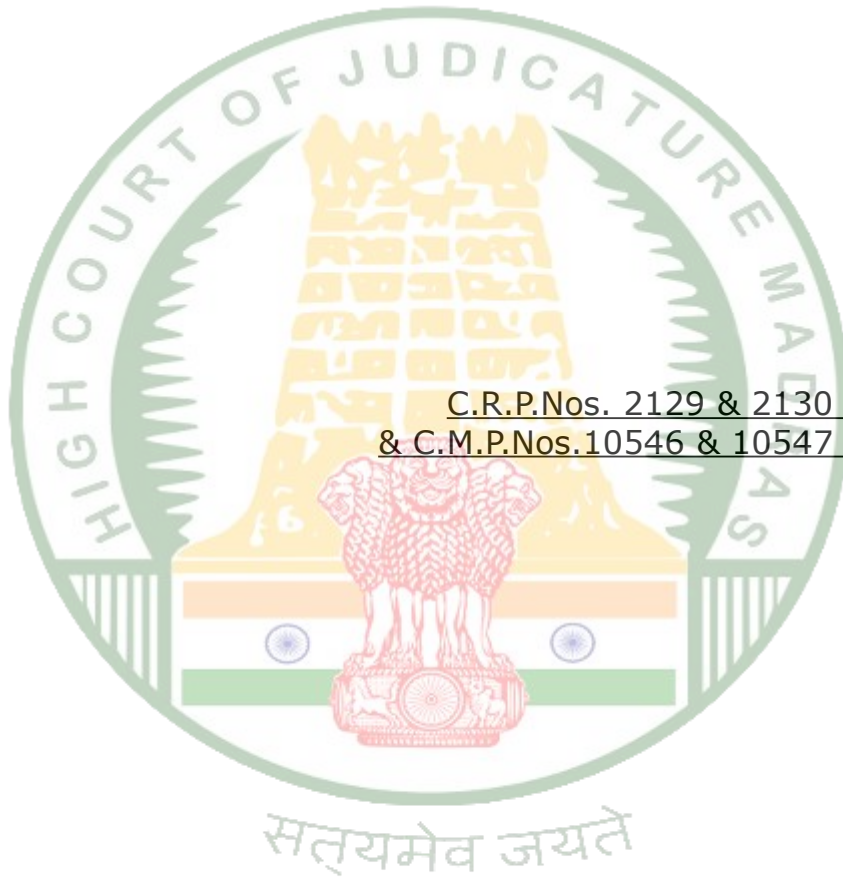
To

The Subordinate Judge
Poonamallee.

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V.M.VELUMANI, J.

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