

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(NPD).No.3771 of 2017
and C.M.P.No.17560 of 2017

A.Faisal Rahman

..Petitioner

Vs.

1.D.Liaqath Ali
2.N.Sahira Banu

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the order and decretal order dated 16.08.2017 passed in E.A.No.168 of 2014 in E.P.No.171 of 2014 in O.S.No.33 of 2012 on the file of the learned Additional Subordinate Judge, Mayiladuthurai and prays for setting aside the same.

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For petitioner : Mr.S.Sadasharam

ORDER

The first respondent has filed a suit for specific performance in

OS.No.33 of 2012 before the Sub Court, Mayiladuthurai and was decreed. In the aforesaid suit, an execution petition in EP.No.171 of 2014 was filed for delivery of possession of the suit property. At this stage, the revision petitioner has filed an obstruction application in EA.No.168 of 2014 in the above EP under Order 21 Rule 97 read with Section 151 of the Civil Procedure Code by claiming that on the basis of sale deed executed on 26.04.2013, the revision petitioner is the owner of the property comprises in Survey No.199/A/33. Obtaining the warrant for possession, the first respondent / decree holder has disturbed the revision petitioner's property of an extent of 11 cents of house site with a building thereon comprised in Survey No.199/A/33. After considering the case of the revision petitioner as well as the respondents therein, the court below has rejected the aforesaid application in EA.No.168 of 2014. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would submit that the first respondent herein / decree holder, taking advantage of the decree passed in the above suit, has now attempted to interfere with the revision petitioner's property in Survey No.199/A/33 (originally Survey No.199/A1/A and the same was sub

divided as Survey No.199/A/33). Therefore, the order passed by the executing court is liable to be set aside.

3. The order of the trial court would show that the revision petitioner's property comprises in Survey No.199/A/33 whereas the suit property in 199/A1/A. It is seen from the counter statement filed by the first respondent / decree holder in the instant application, that both the properties are separate and different. The court below record the said contention and held that the properties are not one and the same and they are different properties. Therefore, the application was rejected by the court below.

4. Heard, the learned counsel for the petitioner and perused the materials available on record.

5. Admittedly, both the properties are different properties and the court below has rightly rejected the contention of the revision petitioner after carefully perusing the materials and dismissed the instant application. Hence, there is no warrants to interfere with the order passed by the court below and the same has to be confirmed.

6. In view of the above, the Civil Revision Petition fails and accordingly, the same is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

20.11.2017

Speaking/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To

The Additional Subordinate Judge,
Mayiladuthurai.



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D.KRISHNAKUMAR. J,

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