

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.431 of 2014

Mallappa

.. Petitioner

Vs.

1.Bathrakamma
2.Nagarajappa
3.Madevasamy
4.Basuvanna
5.Sentirappa
6.Basuvaraj
7.Kumara
8.Mahendra

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 31.08.2012 made in E.P.No.43 of 2011 in O.S.No.283 of 2009 on the file of the District Munsif Court, Sathyamangalam, Erode District.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.B.Kumarasamy

ORDER

This civil revision is filed against the fair and decreetal order dated 31.08.2012 made in E.P.No.43 of 2011 in O.S.No.283 of 2009 on the file of the District Munsif Court, Sathyamangalam, Erode District.

2.Learned counsel for the petitioner has filed an execution petition for delivery and the same was dismissed on the ground that the property was not identified. He would further submit that the petitioner has filed the suit for declaration of title and also recovery of possession. The suit was decreed on 19.10.2010. Commissioner was appointed and filed a report. In his report, the property was identified. That factum was not considered by the Executing Court. Hence, he prays for setting aside the fair and decreetal order passed by the Executing Court.

3.Resisting the same, learned counsel for the respondents would submit that the description of the suit property is entirely different from the property mentioned in the execution petition. So the Executing Court has correctly dismissed the application. Hence, he prays for dismissal of the revision.

4. Considered the rival submissions made on both sides and perused the typed set of papers.

5. The petitioner as a plaintiff filed a suit for declaration of title and recovery of possession of the suit property. During pendency of the suit, Commissioner was appointed and he has measured and identified the property. He filed his report and plan. The suit was decreed on 19.10.2010. Thereafter, the petitioner has filed the execution petition, in which, the description of the property was wrongly mentioned. On that basis, the trial Court has dismissed the execution petition. Furthermore, Commissioner's plan was not placed before the Executing Court. In such circumstances, I am of the view that the description of the property mentioned in the execution petition is entirely different from the suit property. The Executing Court has rightly dismissed the execution petition and hence, the fair and decretal order passed by the Executing Court does not warrant any interference and it is hereby confirmed. Consequently, the Civil Revision Petition is dismissed.

6. In the result, the Civil Revision Petition is dismissed. The petitioner has every right to file an execution petition for recovery

R.MALA,J.

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of possession in respect of the suit property as per the decree passed in O.S.No.283 of 2009, on 19.10.2010. No costs.

19.01.2017

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To

The District Munsif Court, Sathyamangalam, Erode District.

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