

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.119 of 2016

and

C.M.P.No.675 of 2016

1.Mr.Shanmugam
S/o.Verapathra Mudaliyar

2.Mrs.Saroja
W/o.Shanmugam

.. Petitioners/Defendants/
Judgment Debtors/Respondents

-Vs.-

Mr.Pannerselvam
S/o.Vaithiyanatha Padayachi

.. Respondent/Plaintiff/
Decree Holder/Petitioner

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 09.10.2015 made in E.A.No.191/2015 in O.S.No.295/1996 on the file of the learned District Munsif Court, Nagapattinam.

For Petitioners : Mr.J.Nandagopal

For Respondent : Mr.S.Arivazhagan

ORDER

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2.The petitioner has come up with the present Civil Revision Petition challenging the impugned order dated 09.10.2015 made in E.A.No.191/2015 in O.S.No.295/1996, wherein the application seeking for re-issuance of delivery warrant came to be allowed.

3.The respondent herein as plaintiff has filed the suit for declaration of title, recovery of possession, recovery of rental arrears and costs. After contest, the said suit was dismissed on 21.11.1997, as against which the respondent/plaintiff preferred an appeal in A.S.No.116 of 1998. The said appeal came to be allowed and as against the said, a second appeal was preferred by the revision petitioners/judgment debtors. The second appeal also came to be dismissed and hence, the respondent/decree holder preferred an execution petition in E.P.No.108 of 2011, in which delivery was ordered. In the said proceeding, the Ameen has returned the delivery warrant stating that the suit property is said to be situated in S.No.13/3B measuring an extent of 10 cents, but the property identified in S.No.13/24 measures only 9 cents. Further, the

eastern boundary of the suit property does not match with those stated in the schedule. Thus, the respondent/decreed holder filed an application in E.A.No.191/2015 for reissuing the delivery warrant stating that only the S.No.13/3B has been reclassified as S.No.13/24 and the extent is 9 cents. Further, there is no dispute in identifying the property, since the revision petitioners alone is in possession of the property and hence, he is entitled to take delivery of the property. The executing Court after hearing both sides had ordered re-issuance of delivery warrant, against which the present Civil Revision Petition has been preferred.

4.The learned counsel appearing for the revision petitioners would submit that the respondent/decreed holder has not filed any scrap of paper to show that only the old S.No.13/3B is reclassified as S.No.13/24. Further, the respondent has not filed any document to show that the property mentioned in the decree is the property situated in S.No.13/24. Per contra, the revision petitioners have filed documents Exs.R.1 to R.4 [Sale deed dated 06.04.1992, Chitta and Adangal] to show that patta in S.No.13/24 stands in the name of the revision petitioners. However, those documents were not considered by the Trial Court. Hence, the learned counsel for the revision petitioners prayed for setting aside the order passed by the execution Court.

5. Resisting the same, the learned counsel appearing for the respondent/decreed holder would submit that the respondent herein has obtained decree in respect of S.No.13/3B measuring an extent of 10 cents and the said decree was upheld by this Court in S.A.No.565 of 2002. Further, the property in possession of the revision petitioner/judgment debtor is the suit property and he is only the tenant. Subsequently, he denied the title of the respondent, as though he had purchased the property. So, the respondent as a plaintiff has filed the suit in O.S.No.295 of 1996 for declaration of title, recovery of possession, recovery of rental arrears and costs. Even though the said suit was dismissed, the appeal preferred in A.S.No.116 of 1998 came to be allowed, as against which the second appeal preferred in S.A.No.565 of 2002 was dismissed. So, the decree and judgment for declaration of title and recovery of possession has become final. Even though the revision petitioners have filed the documents Exs.R.1 to R.4, those documents have no relevance and they cannot claim title merely because the patta and chitta stands in their name. Further, this Court has clearly confirmed the title of the respondent/plaintiff. Hence, the Ameen ought to have delivered the property which was in possession of the revision petitioners. That factum was rightly considered by both the Courts below and hence, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

6.Considered the rival submissions made by both sides and perused the typed set of papers.

7.The respondent/plaintiff is the decree holder in respect of the property in S.No.13/3B measuring an extent of 10 cents and the same has been confirmed upto this Court in S.A.No.565 of 2002. Thereafter, he has preferred a execution petition and the delivery was also ordered. However, the delivery warrant was returned stating that the property in possession of the revision petitioners which is sought to be delivered in favour of the decree holder is situated in S.No.13/24 measuring 9 cents, instead of 10 cents as set out in the decree. Further, the eastern boundary also does not tally with those stated in the schedule of property.

8.Admittedly, the respondent/decrece holder has obtained recovery of possession in respect of the property which is in possession of the revision petitioners/judgment debtor. It is pertinent to note that the revision petitioners have filed documents Exs.R.1 to R.4, wherein S.No.13/3B measuring 10 cents has been mentioned. Though the said documents came into effect before the filing of the suit, the Courts below, after considering those documents has categorically held that the respondent/decrece holder is the owner of the property. The documents filed by the revision petitioners show

that they are in possession of the property situated in Old S.No.13/3B, New S.No.13/24. In these circumstances, I am of the view that the respondent/decreed holder is entitled to take delivery of possession of the property in S.No.13/24 which is in possession of the revision petitioners/judgment debtors.

9.Furthermore, the issue in respect of the change in the eastern boundary is concerned, the suit was filed as early as in the year 1993 and the Execution Petition was filed in the year 2011, nearly after 18 years. Hence, there is every possibility for a change in boundary. In these circumstances, the executing Court has rightly considered and ordered re-issuance of delivery warrant to the Ameen in order to execute the delivery.

10.In view of the above stated position, I am of the view that there is no reason to interfere with the finding of the executing Court and the same is hereby confirmed. Consequently, the Civil Revision Petition is dismissed as devoid of merits. Connected miscellaneous petition is closed. No costs.

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Index:Yes/No

To

learned District Munsif Court,
Nagapattinam.

R.MALA, J.

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Dated : 05.01.2017

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