

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2386 of 2012
and
M.P.No.1 of 2012

Srinivasan

.. Petitioner

Vs.

1.A.Pachiyappan

2.T.Elumalai

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair order and decreetal order dated 30.01.2012 passed in E.A.No.7 of 2011 in E.P.No.19 of 2004 in O.S.No.35 of 2001 by the learned District Munsif-cum-Judicial Magistrate at Uthiramerur.

For Petitioner : Dr.C.Ravichandran

For Respondents : No Appearance

ORDER

The petitioner has filed this Civil Revision Petition seeking to allow the above C.R.P. by setting aside the fair order decretal order dated 30.01.2012 passed in E.A.No.7 of 2011 in E.P.No.19 of 2004 in O.S.No.35 of 2001 by the District Munsif cum Judicial Magistrate at Uthiramerur, consequently allow the E.A.No.7 of 2011 in E.P.No.19 of 2004 in O.S.No.35 of 2001 on the file of the District Munsif cum Judicial Magistrate at Uthiramerur.

2.It is the case of the petitioner that the 1st Respondent herein filed a suit in O.S.No.35 of 2001 before the District Munsif cum Judicial Magistrate at Uthiramerur against the 2nd Respondent for recovery of money due to him and the same was decreed on 23.07.2004. The 1st respondent herein to realize the decree amount filed execution petition in E.P.No.19 of 2004 to attach the property of the 2nd Respondent herein and to bring the same under Court auction sale. Accordingly property mentioned in the said E.P was brought under Court auction sale on 12.03.2007 in which the revision petitioner was the highest bidder to the property in S.No.359/2 measuring an extent of 0.21.0 hect. After payment of entire sale consideration sale deed came to be executed in favor of the revision petitioner by the Court and the sale

was also confirmed on 01.04.2008.

3.At that point of time, the revision petitioner came to know that though actual survey number for item No.2 in the Schedule of property mentioned in the said E.P. is 399/2, but wrongly mentioned as 359/2. The 2nd Respondent herein was the owner of the properties in S.No.399/1 and 399/2 and the S.No.359/2 belongs to some other person. The petitioner also was put in possession of S.No.399/2 and he is in physical possession. Since the S.No for item No.2 in the above execution petition was wrongly mentioned as 359/2 instead of 399/2 due to typographical error, it necessitated the petitioner to file an application to amend the correct S.No in the Execution petition and as well in the sale papers. Hence in order to rectify Survey Number, the petitioner filed E.A.No.7 of 2010 to amend the correct survey number in the schedule of property and in the sale paper. The 2nd respondent herein who is the Judgment debtor filed counter opposing the said application.

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4.The Learned Judge by an order dated 30.01.2012 dismissed the application filed by the Revision petitioner seeking to amend the correct S.No. on the ground that the auction sale was confirmed on

01.04.2008 itself and further held that S.No.399/2 was not attached and auctioned in the Court auction sale.

5.I heard Dr.C.Ravichandran, learned counsel for the petitioner and perused the entire records. There was no representation on behalf of the respondents.

6.It reveals from the records of the Court below that the petitioner is a Court auction purchaser of the property in S.No.359/2 measuring an extent of 0.21.0 Hectare in Azhisoor Village of Uthiramerur Taluk. It is the contention of the Revision petitioner that in the Schedule of property mentioned in E.P.No.19 of 2004, two properties are mentioned namely S.No.399/1 to an extent of 0.16.0 Hectare and S.No.359/2 to an extent of 0.21.0 Hectare in Azhisoor Village of Uthiramerur Taluk and the Revision petitioner had purchased the property in S.No.359/2 through Court Auction. After conformation of sale, the petitioner came to know that the correct S.No. of the property, owned by the judgment debtor and he purchased is S.No.399/1 and not the property situated in S.No 359/2. Thereupon he filed an application in E.A.No.7 of 2007 to amend the correct S.No in Schedule of property contained in the Execution petition and as well in

the sale papers.

7.However, the Lower Court dismissed the application by holding that already sale was conformed as early as on 01.04.2008 and the EP was also closed. The Court below further held that S.No.399/2 was not the one attached and auctioned.

8.At this juncture it is pertinent to mention that one P.Muniyammal filed yet another application in E.A.No.8 of 2007 under Order XXI, Rule 90 CPC in E.P.No.19 of 2004 as a third party application claiming that the subject property was mortgaged to her by the 2nd respondent herein/ Judgment debtor and thereby sought to implead her as a party to the EP proceeding and prayed to set aside the Court Auction sale. The Schedule of property in the said application remained mentioned as S.No.399/1 measuring 0.16.0 S.No.399/1, measuring 0.21.0 Hectare in Azhisoor Village of Uthiramerur Taluk. From the description of schedule of property in E.A.No. 8 of 2007 filed by P.Muniammal, the correct S.No. of the property purchased by the revision petitioner appears to be S.No.399/2 and not 359/2.

9. That apart the revision petitioner filed the sale deed of the 2nd respondent herein dated 06.08.1979 pertaining to S.No.399/2 and 399/1 to establish that 399/1 and 399/2 belong to the 2nd respondent. But the Court below has not taken into consideration of the said sale deed and as well as the description of properties in E.A.No. 8 of 2007.

10. Only in order to rectify the said mistake, the petitioner has filed the above application to amend the S.No of the property as 399/2 in the execution proceedings and as well in the sale papers issued by execution court. If the said mistake is not rectified the petitioner will suffer. It is an admitted fact that the sale deed of JD and physical possession of JD is only in respect of S.No.399/2 and physical possession handed over to the petitioner only in respect of S.No.399/2 but there is a mistake in mentioning the same as S.No.359/2.

11. In ***M.Chokkappan Versus C.Selvaraj*** case reported in ***2004 (2) MLJ 722***, this Court has held that in the interest of justice amendment could be made at the stage of delivery of property if the identification is not in dispute. This Court has followed the *A.Shamsuddin v. K.Chellappan* reported in [*\(1998\)2 MLJ. 99*](#), in which this Court held:

"Civil Procedure Code (V of 1908), [Secs.151](#) and [152](#) ,[O.6](#), [Rule 17](#). Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960, [Sec.18](#). Petition for eviction of tenant(2004) 2 MLJ 722 at 723ordered. In the Execution Petition, Amin reporting that he could not identify property. Praying for better particulars. Landlord's application to add a better description of property. Application, held, was one under [Secs.151](#) and [152](#). Order of Rent Controller allowing application, sustained.

The Court does not think that the present application could be treated as an amendment. It is only an explanation regarding the description of the property. By virtue of the present applications, the landlord is only giving better particulars to identify the rented building. If that be so, it cannot be said that to settle a controversy, an amendment is made. Regarding the tenanted building, there is no controversy. Naturally, it is only a correction of the boundaries. If that be so, the application need not be filed during the pendency of the proceedings. It can be filed even after the proceedings have come to an end and before the satisfaction of the decree is entered. The principle of Order 6, Rule 17, C.P.C. will apply only to pending proceedings and when there is controversy. In this case, so long as there is no

controversy, the petitioner cannot impeach the right of the decree-holder to the better particulars to identify the rented building. The principles of [Secs.151](#) and [152](#), Civil Procedure Code apply to the facts of this case and the lower Court has taken into consideration the interests of justice in allowing the applications. There is no prejudice caused to the petitioner and there is also no manifest injustice done by the Court below in allowing the applications."

6. I am in respectful agreement with the judgment in *A.Shamsuddin v. K.Chellappan* *A.Shamsuddin v. K.Chellappan* *A.Shamsuddin v. K.Chellappan* [\(1998\)2 MLJ. 99](#) and of the view that at the time of filing the Rent Control Original Petition for eviction T.S.No. could have been omitted to be mentioned by mistake, the decree-holder can seek to incorporate the same in the delivery warrant, in that no hardship will cause to the respondent/tenant, inasmuch as the property was described with correct boundaries and it was also not challenged before the Rent Controller as regards the identity of the property. In that view the revision petition is to be allowed by setting aside the order of the Executing Court.

7. In the result, this civil revision petition is allowed setting aside the order of the Executing Court dated 14.2.2002 made in

E.A.No.72 of 2001 in E.P.No.93 of 1994 in R.C.O.P.No.43 of 1992. The Executing Court is directed to incorporate the T.S.No.66/2313 in the delivery warrant after making necessary amendment in the Execution Petition on the application by the decree-holder mentioning the Town Survey Number as 66/2313 and by allowing the said application straightaway. It is further directed to issue suitable directions for delivery of the property.

12.It is settled one can dispossess the property what he possessed and had title over the same. Admittedly the J.D. had title and possessed the property in S.No.399/2 and therefore the mistake in mentioning the S.No.359/2 might be typographical mistake only as admittedly the title of JD was referred, in pursuant to his title deed alone. This Court is of the view this mistake is not on the part of the petitioner namely court auction purchaser but might be on the part of decree holder who failed to note the typographical mistake while mentioning the survey number in E.P. The 2nd respondent, who is the J.D. could have informed the same but he remained ex-parte, therefore now he can't object the amendment sought by the revision petitioner so as to defeat the right of court of auction purchaser, taking advantage of the mistake. If the J.D. takes a plea that he had

title to the property in S.No.359/2 and the same was sold, that may be different. But when he takes a plea, on the strength of mistake alone the court has to see that such a plea should be thrashed away at the nib to do substantial justice.

13.In such circumstance in the interest of justice and Fair play this Court has no hesitation to set aside the impugned order for having taken a stringent and narrow view. It is the bounden duty of the Court as to see that interest of a Court Auction purchaser is to be protected always, unless the auction is agitated on the ground of fraud or misrepresentation.

14.In the result:

a) the civil revision petition is allowed by setting aside the order in E.A.No.7 of 2011 in E.P.No.19 of 2004 in O.S.No.35 of 2001, dated 30.01.2012, on the file of the District Munsif-cum-Judicial Magistrate at Uthiramerur.

b) the Executing Court namely the District Munsif-cum-Judicial Magistrate, Uthiramerur is hereby directed to carry out the amendment in the E.P. as well as in the sale

deed executed by the court in favour of the auction purchaser without reference to filing of any further formal application to amend in the sale deed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2017

vs

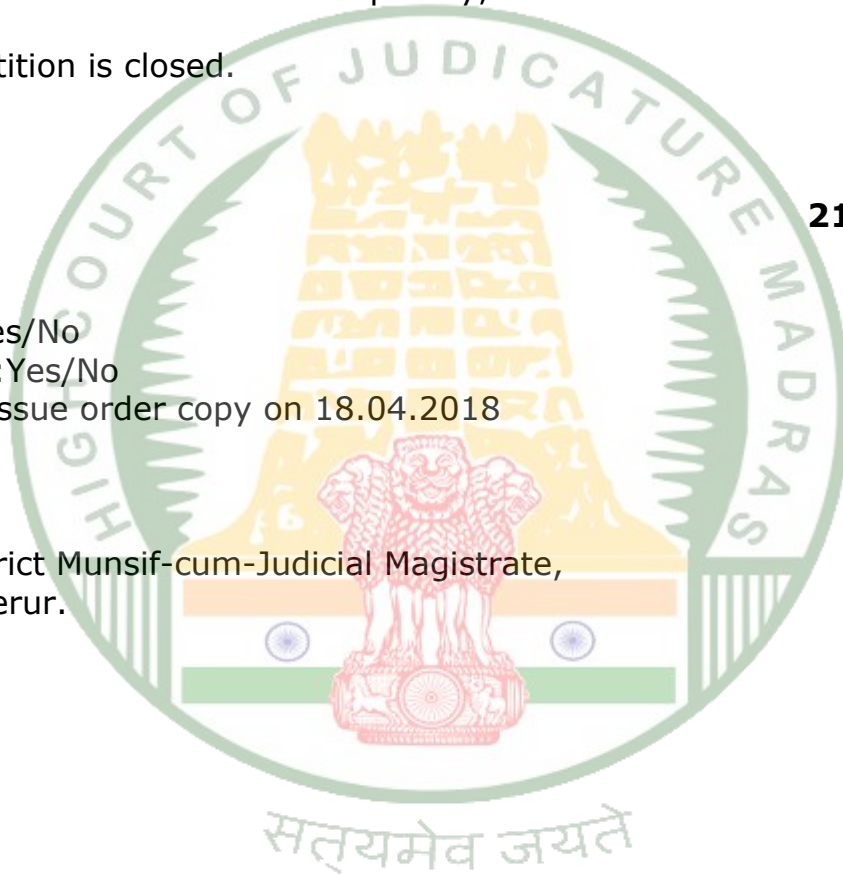
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Note : Issue order copy on 18.04.2018

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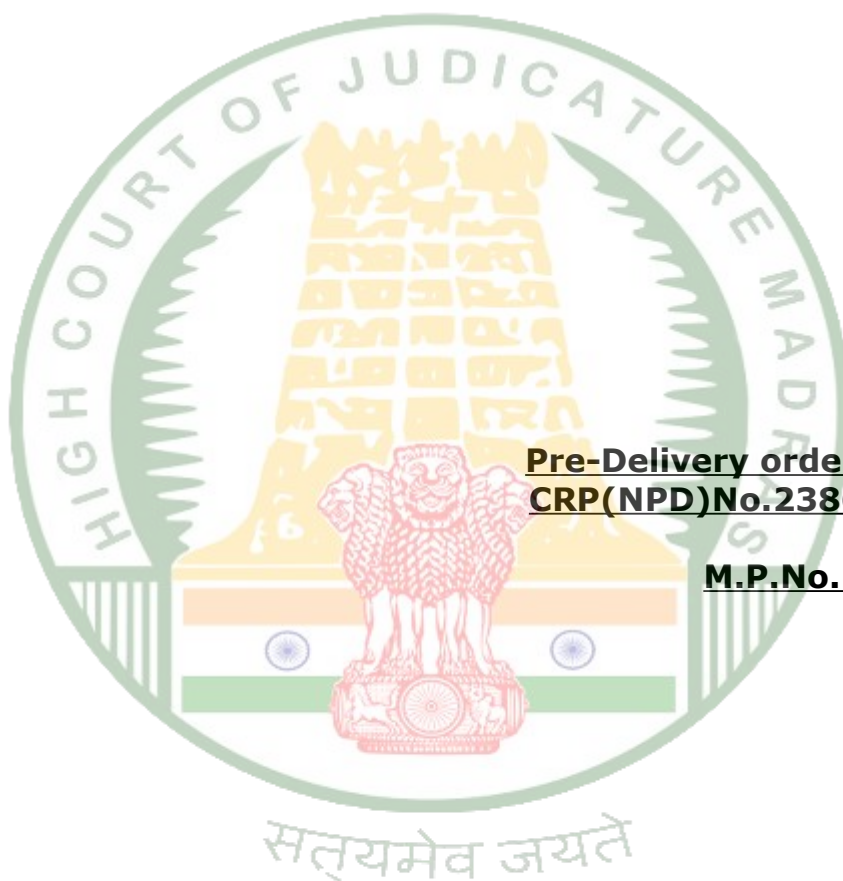
The District Munsif-cum-Judicial Magistrate,
Uthiramerur.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
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