



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.R.P (MD) No.310 of 2017 (NPD)

and

C.M.P (MD) No.1541 of 2017

1.Balu Nair

2.Kumar

... Petitioners/Respondents 10 & 11/
Respondents 10 & 11/Defendants

Vs.

1.Rajam

2.Karthikraja

3.Murugesan

4.Asokan

5.Vijayarani

6.Jeyanthi

7.Maragatharajan

8.Vijayakumar

9.Rajarajacholan

.. Respondents 1 to 9/Respondents 1 to 9/
Respondents 1 to 9/L.R.s of Plaintiff

10.Ponmozhi

11.Muthu Mahesh

12.Karthik

(12th Respondent Rep. Through his

Power Agent 11th Respondent herein)

... Respondents 10 to 12/Petitioners/
Petitioners/Subsequent Purchasers

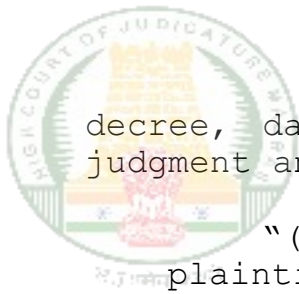
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 09.12.2016 in E.A.No.243 of 2013 in E.P.No.62 of 2013 in O.S.No.228 of 2000, on the file of Learned District Munsif, Pudukkottai and allowing this Civil Revision Petition.

For Petitioner : Mr.K.Baalasundharam

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order, dated 09.12.2016 in E.A.No.243 of 2013 in E.P.No.62 of 2013 in O.S.No.228 of 2000 passed by the learned District Munsif, Pudukkottai.

2.The petitioners are respondents 10 & 11 in E.P.No.62 of 2013 and E.P.No.243 of 2013 and defendants 1 & 2 in O.S.No.228 of 2010 before the Principal District Munsif, Pudukkottai. One Somasundara Pandaram filed suit in O.S.No.228 of 2000 against the petitioners. The said suit was finally decided by this Court, by the judgment and



decree, dated 12.12.2011 made in S.A.No.1173 of 2009 and by the judgment and decree, this Court passed the following order:

"(i) That the decree directing the defendants to put the plaintiff into possession of the suit property be and hereby is confirmed subject to the condition that the plaintiff shall pay the estimated value of the buildings or the structure put up by the defendants on the site.

(ii) that the such estimated value shall be fixed by the executing court before the delivery of possession is effected and and such a value shall be as prevailing as on the date of eviction.

(iii) that if the plaintiff fails to exercise such an option to pay the estimated value of the structure or the building on the suit property on his side, the defendant be and hereby is entitled to the entire suit property for themselves including the site subject to payment of the estimated value of the site prevailing as on the date of eviction."

After Judgment of this Court, the plaintiff Somasundara Pandaram sold the property to one Arunachalam on 16.12.2011. The plaintiff Somasundara Pandaram died on 01.02.2012. Arunachalam filed E.P.No.62 of 2013 to execute the decree and subsequently, died on 14.04.2013. The respondents 10 to 12 herein are legal heirs of Arunachalam. Petitioners were respondents 10 & 11 in the said E.P. The respondents 10 to 12 filed E.A.No.243 of 2013 to appoint an Advocate Commissioner to value the superstructure with the help of Engineer so as to enable them to pay the said value to the petitioners and get possession as per the judgment passed in S.A.No.1173 of 2009.

3. The petitioners opposed the said application. According to petitioners, the sale in favour of Arunachalam is not valid and property mentioned in the E.P., is different from the property mentioned in the decree in the Second Appeal. The survey Number is also different. The respondents 10 to 12 are not entitled to maintain the execution petition.

4. The learned Judge considering all the materials on record especially the judgment of this Court in S.A.No.1173 of 2009, allowed the E.A.No.243 of 2013 and appointed an Advocate commissioner to value the superstructure.

5. Against the said order, dated 09.12.2016, made in E.A.No.243 of 2013 passed by the Principal District Munsif, Pudukottai, the petitioners have come out with the present Civil Revision Petition.

6. The learned counsel for the petitioners reiterated the grounds raised in the Civil Revision Petition and submitted that respondents 10 to 12 are not bonafide purchasers and decree passed by this Court in S.A.No.1173 of 2009 is indivisible and cannot be executed in part. The suit property mentioned in the E.P., and survey number mentioned are different from the suit property and



survey number.

7.I have heard the learned counsel appearing for the petitioners and also perused all the materials available on record.

8.The suit filed by Somasundara Pandaram was finally decided by this Court. This Court, by the judgment and decree, dated 12.12.2011 held that the superstructure put up by the petitioners must be valued and if Somasundara Pandaram pays the value of the said superstructure, the petitioners must hand over the possession to him. If said Somasundara Pandaram fails to pay the said value of the building and superstructure, then the petitioners are entitled to pay the value of the land and retain the possession. After decree, Somasundara Pandaram sold the property to one Arunachalam. The petitioners are contending that the said sale is not valid. They have not substantiated their case as to how the said sale is not valid. It is pertinent to note that after death of Arunachalam their legal heirs are impleaded as party defendants in E.P., by filing E.A.Nos.240 and 241 of 2013 and impleaded them as petitioners in the E.P. After considering the objections of the petitioners, by the order dated 13.08.2015 the learned Judge allowed the E.A.Nos.240 & 241 of 2013 and impleading the respondents 10 to 12 as petitioners in the E.P. The petitioners have not challenged the said order. The learned Judge considering this aspect held that objection of the petitioner is devoid of merit.

9.From the records, it is seen that the property mentioned in the decree passed in S.A.1173 of 2009 as well as property described in the execution petition are one and the same. The learned Judge has appointed an Advocate Commissioner to value the superstructure and building as per the judgment and decree of this Court in the Second Appeal. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

10.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Munsif, Pudukkottai.

+ 1 CC TO Mr.K.BAALASUNDHARAM, ADVOCATE IN SR No. 9110

AM

TE/PM-PN : 07/03/2017 : 3P/3C

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