



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2017  
(Reserved on 10.04.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE **G. JAYACHANDRAN**

CRP (NPD) (MD) No. 730 of 2017

and

CMP (MD) No. 3335 of 2017

M. Ramachandran

... Petitioner

vs.

A. Suseela

... Respondent

Petition filed under Section 115 CPC against the order and decreetal order dated 30.01.2017 made in E.A.No.225 of 2016 in E.P.No.128 of 2013 in O.S.No.3 of 2007 on the file of Sub Court, Devakottai.

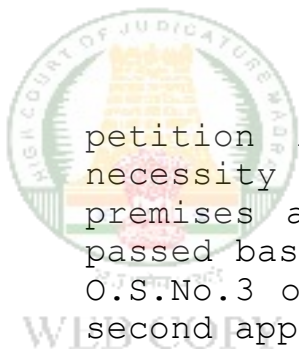
For Petitioner : Mr.V.Sitharanjandas

### **ORDER**

The defendant who suffered a decree of specific performance, has filed an application in the execution petition, claiming that he is not the absolute owner of the property in dispute. His right is only to the extent of 1/3<sup>rd</sup> share in the petition mentioned property and he is willing to execute the sale deed with regard to his undivided share, provided, the decree holder agrees to pay the present market value, based on the principle of equity and unlawful enrichment.

2.For the said purpose, he has sought for appointment of Advocate Commissioner to inspect the petition mentioned property with the assistance of a qualified Engineer to ascertain the current market value of the property.

3.The said petition has been opposed by the decree holder, on the ground that the petitioner has tried to canvass the points of ancestral property and restricted share in the suit property which he raised before the Courts below and failed. The High Court in the second appeal has categorically held that the petitioner as Kartha of the family, had entered into a sale agreement and therefore, such plea is not sustainable. Under these circumstances, canvassing the very same point in the execution



petition is only to protract the proceedings. There is no necessity for appointment of Commissioner to inspect the suit premises and to fix the market rate, while the decree has been passed based on a concluded contract, as early as on 10.09.2009 in O.S.No.3 of 2007 and the same been confirmed by the first and the second appellate Courts.

4.The Trial Court, on considering the petition, has held that the specific performance suit has reached finality in S.A.No.291/11 dated 21.06.2013 and there is no appeal or any other proceedings pending in connection with the said suit. The Execution Court cannot go beyond the decree by way of altering or amending the decree.

5.Aggrrieved by the said order, the present revision petition is filed on the ground that the suit property is ancestral property devolved upon the father of the revision petitioner Muthuvel Chettiar, who got the property through a decree passed in O.S.N.22/84 on the file of the Subordinate Court, Devakottai. On the demise of Muthuvel Chettiar on 12.12.1996, the property has devolved upon his wife Krishnammal, two sons namely, Subbaiah @ Subramanian and Ramachandran who is the revision petitioner herein. There is also a suit for partition among them and pending before the Principal District Court, Sivagangai, in O.S.No.32/14. Therefore, the execution of specific performance decree in respect of the entire property cannot be carried out when there are other co-sharers in the property.

6.Perusal of the judgment made in S.A(MD)No.291 of 2011 dated 21.06.2013, reveals that based on the oral sale agreement, the revision petitioner has received Rs.1,75,000/- from the plaintiff out of the total sale consideration of Rs.2 lakhs. His defence denying the sale agreement, has been negatived by the Courts upto the High Court in S.A(MD)No.291 of 2011. The judgment passed in the second appeal further reveals that the points raised by the revision petitioner in his application E.A.No.225/16 have already been canvassed and been negatived.

7.While the price has already been fixed and substantial portion of the sale consideration is proved to be received by the revision petitioner, there is no necessity for appraising the current market value of the property at this stage. In so far as the denial of title over the suit property to an extent of 2/3<sup>rd</sup> portion, the same was canvassed in the suit and negatived. E.A.No.225/16 filed by the revision petitioner is devoid of merit and lacks bona fide. Further, the prayer sought in that application is beyond the scope of the decree passed in O.S.No.3 of 2007 as confirmed by the first and second appellate Courts. The Trial Court has rightly dismissed the application and there is no illegality in the impugned order of the Trial Court.



Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,  
Devakottai.

+1cc to M/S.V.Sitharanjandas, Advocate SR.No.51623

CRP (NPD) (MD) No.730 of 2017  
12.04.2017

JM/KP/SAR 4/02.05.2017/3P/3C