

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018
CORAM

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Rev.A.Nos.239 and 313 of 2018 in
C.R.P(NPD).Nos.53 & 54 of 2017

1. Anthoniammal
2. L.M.Lawrence

.. Petitioners in both the Applications

Vs.

- Duraisamy (died)
1. Regina Duraisamy
2. Sheela Vincent
Jayaraj (died)
3. Soosaimary
4. Xavier
5. Kolandai Theresa
Rathinammal (died)
Julie (died)
6. Paulin
7. Marshall
8. A.Lawrence
9. Sevin
10. Francis
Arokiyasamy (died)
Santhana Mary @ Victoria (died)
11. Anthony Joseph
12. Mary Peter
Jayamarriammal (died)
Stainslans (died)
13. Manoharan
14. Joseph @ Maria Joseph
15. Margret
16. Victor
17. Amalraj
Nirmal Kumar (died)

.. Respondents in both the Applications

PRAYER in both the Applications :

Petition filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure, to review the common order dated 27.07.2018 made in C.R.P.(NPD) Nos.53 & 54 of 2017.

Prayer in CRP.NO.53 of 2017:-

Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the Order and Decreetal order dated 03.12.2016 made in E.P.No.18 of 2014 in O.S.NO.936 of 1977 on the file of the I Additional District Munsif, Coimbatore.

Prayer in CRP.NO.54 of 2017:-

Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the Order and Decreetal order dated 03.12.2016 made in E.A.No.105 of 2015 in E.P.No.18 of 2014 in O.S.No.936 of 1977 on the file of the Ist Additional District Munsif, Coimbatore.

For Petitioner : Mr.T.Dhanasekaran

COMMON ORDER

The present review applications have been filed seeking to review the common order dated 27.07.2018 made in C.R.P.(NPD) Nos.53 & 54 of 2017.

2 This Court by order dated 27.07.2018, dismissed both the civil revision petitions filed by the petitioners herein and confirmed the order of the Executing Court and now the petitioners are before this Court with the present applications to review the same.

3 The learned counsel for the petitioner would submit that the properties mentioned in the B Schedule are not covered under the decree since the same belongs to one Chinnammal. Hence the final decree with respect to B Schedule property cannot be executed. Further, since C Schedule properties are situated outside the jurisdiction of the executing Court, the executing Court does not have any power to appoint an Advocate Commission for effecting delivery with regard to C Schedule properties. He further contended that this Court failed to appreciate above facts properly, which resulted in dismissing the revision petitions filed by the petitioners.

4 Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5 The executing Court elaborately discussed the subject matter and has given finding and this Court also upheld the same, since this Court does not find any infirmity in the order. The revision petitioners have not proved that the "B" Schedule

Property is that of Chinnammal and the document produced before the executing Court is covered under "B" Schedule property, therefore the trial Court rejected the claim made by the revision petitioners, as far as B schedule properties are concerned. As far as C schedule properties are concerned, the main contention of the petitioners is that C schedule properties are situated outside the jurisdiction of the Executing Court and hence the Executing Court does not have power to appoint Advocate Commission to execute the decree. It is useful to refer Section XXXIX Rule 4 of CPC, which deals the above issue, and is extracted here under:

"(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction."

6 In a partition suit, if any one of the property is situated within the jurisdiction of the Executing Court, then the Executing Court has every power to execute the decree, even some of the properties are situated outside the jurisdiction of the Executing Court. In the instant case, admittedly A and B schedule properties are situated well within the jurisdiction of the Executing Court and hence the same Court has power to execute the decree with regard to C schedule properties, which are situated outside the jurisdiction of the Court. The Executing Court and this Court has given the above finding in the orders passed.

7 This Court after considering the fact that the matter is pending for more than four decades and some of the properties are situated well within the jurisdiction of the Executing Court, has dismissed the civil revision petitions filed by the petitioners and upheld the order of the Executing Court.

8 Therefore, the review applications are hereby dismissed as being devoid of merit and substance. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

cgi

To

The I Additional District Munsif,
Coimbatore.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.73339

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RR(CO)
CS/17/09/2019