



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2018

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) No.24 of 2018 and
C.M.P. (MD) No.93 of 2018

1. T.Munusamy
2. M.Jeyashri ... Petitioners/Judgment Debtors/Defendants

Vs.

M.Shivasangaran ... Respondent/Decree Holder/Plaintiff

Prayer: Civil Revision petition is filed under Section 115 of Civil Procedure Code, to allow the above Civil Revision petition by setting aside the order, dated 15.11.2017 passed in E.P.No.67 of 2017 in O.S.No.21 of 2011 on the file of the learned Additional District Judge(Fast Track Court), Kumbakonam, Thanjavur District.

For Petitioners : Mr.B.Prahalad Ravi
For Respondent : Mr.S.Rajaprabu

JUDGMENT

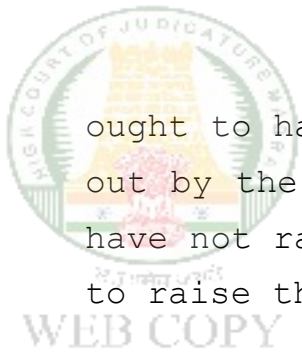
This Civil Revision petition is filed as against the order passed by the learned Additional District Judge(Fast Track Court), Kumbakonam, Thanjavur District, in E.P.No.67 of 2017 in O.S.No.21 of 2011, dated 15.11.2017, directing to deliver the suit property in favour of the Decree Holder, namely, the respondent in this petition.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.



3. The petitioners are the Judgment Debtors/defendants in the Suit in O.S.No.21 of 2011 on the file of the learned Principal District Judge, Thanjavur District. It appears that the respondent filed a Suit for specific performance of an agreement of sale, dated 29.08.2007 and for possession. The said Suit, after contest was decreed by the Judgment and Decree, dated 06.02.2014. In execution of the Decree for specific performance, the respondent appears to have obtained a sale deed through Court. Thereafter, the respondent has applied for delivery of possession in E.P.No.67 of 2017. The said petition was opposed by the petitioners only on the ground that there is a discrepancy between the description of the property found in the plaint and the property described in the sale agreement which was the subject matter of the Suit for specific performance.

4. Strangely, this point was not raised by the petitioners before the lower Court at the time when the Suit for specific performance was heard. It is to be noted that the description found in the sale agreement is not complete, as the eastern boundary of the suit property has not been properly given. This mistake probably is a typographical error and therefore, the Suit was rightly filed in respect of the suit property which can be identified on ground. It is for this reason, the petitioners have not raised any objection, when the Suit was decided on merits. Not even an issue was raised with regard to identity of the property on ground. Therefore, the trial Court rightly allowed the application for delivery of the property and rejected the contentions raised by the petitioners mainly on the ground that the Executing Court cannot go behind the Decree. Since the petitioners have not challenged the Decree, the petitioners cannot raise any objection with regard to the identity of the property on the basis of the original sale agreement. As pointed out earlier, the suit property can be identified on ground. The Suit property and the property agreed to be sold must be the same and therefore no issue regarding identity of the property was raised at the time of trial. The petitioner



ought to have raised during trial. Since the discrepancy now pointed out by the petitioners appears to be a typographical mistake, they have not raised any issue on this. It is not open to the petitioners to raise this point now after this length of time.

5. As a result, the Civil Revision petition has no merits and the same is dismissed. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge(Fast Track Court),
Kumbakonam, Thanjavur District.

+1cc to M/S.B.PRAHALD RAVI, Advocate SR.No.41862.
+1cc to M/S.S.RAJAPRABU, Advocate SR.No.41902.

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