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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Date of Reserve :06.06.2018
Date of Judgment:11.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No.1066 of 2018
and
CMP (MD) No.4640 of 2018

Chellan @ Velayudhan .. Petitioner/Petitioner/2nd Respondent/
2nd defendant

vs

1.Sasidharan ..1st Respondent/1st Respondent/
Decree Holder/Plaintiff
2.Murugappan .. 2nd Respondent/2nd Respondent/1st Respondent/
1st defendant

Prayer: Civil Revision is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.10.2017 passed in Unnumbered E.A. Of 2017 against E.P.No.58 of 2016 in O.S.No.293 of 1983 on the file of the Principal District Munsif, Kuzhithurai.

For Petitioner : Mr.M.Dinesh

For Respondents : M/s.J.Anandhavalli

ORDER

The revision petition is filed against the rejection order dated 30.10.2017 in unnumbered E.A. of 2017. The revision petitioner being the 2nd respondent filed the present application under Section 47 of CPC slating that, the property having total extent of 42 cents, in the local name called "Vishnumangalam Purayidom", whereas the property originally belongs to one Velayudhan Nadar son of Perumal Nadar. The said Perumal Nadar sold 10 cents out of 42 cents in favour of one Muthayyan Nadar. On the other Velayudhan Nadar sold 22 cents in favour of Swamipillai. The said 22 cents was put on usufrutory mortgage with Lakshmipillai, the said Lakshmipillai, transferred the mortgage by way of "Made Over" in favour of decree holder/1st respondent.

<https://hcservices.ecourts.gov.in/hcservices> 2. The case of the revision petitioner is that his wife Jesintha Mary purchased 10 cents of vacant land from 1st original owner Velayudham Nadar through a registered sale deed dated



17.11.1982 in Doc.No.4367/1982, the said 10 cents appears to be an northern portion of 42 cents the petitioners wife constructed two storied building and she was residing there and subsequently died on 18.08.2006.

3.I heard Mr.M.Dinesh, learned counsel for the petitioner and M/s.J.Anandhavalli, learned counsel for the respondents and perused the entire material available on records.

4.On the hearing of arguments from the revision petitioner and the learned counsel for the 1st respondent/Caveator the demarking of 22 cents of land is in question could not be identified by the Court amin and the warrant was not executed, further more the learned counsel for respondent/Caveator also represented that the revision petitioner also filed another case against the respondent which is pending.

5.The learned counsel for the petitioner advanced his submission and on perusal of records, the decree could not be executed for want of door number in the decree and demarking of land etc. and the 1st respondent attempting to execute the decree by including the property of revision petitioner therefore to avoid further complications in the execution of decree, the rejection order dated 30.10.2017 in unnumbered E.A. is mechanical, the object of the Section 47 of C.P.C. to avoid further suits and it is minitrial to avoid multiplicity of proceedings. The reasons assigned by the trial judge is unsustainable and it is liable to be set aside.

6.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order dated 30.10.2017 passed in Unnumbered E.A. of 2017 against E.P.No.58 of 2016 in O.S.No.293 of 1983, on the file of the learned Principal District Munsif, Kuzhithurai;

(b) the Execution Court is directed to number the petition within a period of two weeks from the date of receipt of a copy of this order. Thereafter, to dispose the petition within a period of four weeks, by giving notice to both parties, on day-to-day basis without any delay.

7.With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To
The Principal District Munsif,
Kuzhithurai.

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+1CC to M/s.J.Anandhavalli Advocate in SR.No.72192.

+1CC to Mr.M.Dinesh Advocate in SR.No.72215.

VSV

DS/SKN-RSK/SAR-4 :20.07.2018: 3P/4C

order made in
C.R.P. (MD) No.1066 of 2018
and
CMP (MD) No.4640 of 2018
11.07.2018