



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
RESERVED ON : 03.01.2018  
DELIVERED ON : 06.02.2018  
CORAM :

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**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.R.P. (NPD) (MD) No.2220 of 2017  
and  
C.M.P. (MD) No.10862 of 2017

1.Phanuvel  
2.Loy Rabooni  
3.Sobitha Raj  
4.Suraj Emmanuvel  
5.Lailakumari  
6.Prem Kumar  
7.Rajkumar  
8.Vino Kumar

: Petitioners/Petitioners/  
Respondents 9 to 11, 13 to 17

vs.

Chellammal (Died)  
1.K.M.Robert Samraj  
2.K.M.Sellvin Lal  
3.K.M.Vijayakumar  
4.M.C.Joylet Dawson  
5.K.M.Jayachandra  
6.Binny Dawson  
7.Binita Caroline  
8.Robertson Rajappan  
9.Justin  
10.T.Harris Jeba Kumar  
11.T.Latha  
12.T.Sutha

: Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 03.05.2017 passed in E.A.No.382 of 2015 in E.P.No.104 of 2011 in O.S.No.403 of 1961, on the file of the Principal District Munsif, Kuzhithurai.

For Petitioners

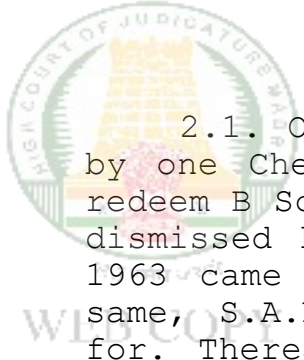
: Mr.K.N.Thampi

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ORDER

This Civil Revision Petition has been filed challenging the order and decree passed by the learned Principal District Munsif, Kuzhithurai, in E.A.No.382 of 2015 in E.P.No.104 of 2011 in O.S.No.403 of 1961 dated 03.05.2017.

2. The facts of the case, as averred in the affidavit, are as follows:  
<https://hcservices.ecourts.gov.in/hcservices/>



2.1. Originally, the suit in O.S.No.403 of 1961 was instituted by one Chellammal, seeking a direction to allow the plaintiff to redeem B Schedule items from defendants and other reliefs, which was dismissed by the trial Court. Challenging the same, A.S.No.137 of 1963 came to be filed, which was also dismissed and against the same, S.A.No.251 of 1967 was filed, which was allowed, as prayed for. Thereafter, I.A.No.631 of 1974 came to be filed for passing final decree, which was also ordered. Aggrieved over the same, the defendants in the suit have opted for appeal provisions and went upto Special Leave Petition. Based on the direction of the Hon'ble Apex Court, they had filed a review petition in the second appeal, which was dismissed, with an observation 'this aspect has been canvassed before this Court for the first time, that too in the review application'.

2.2. In the meanwhile, the said Chellammal died and her legal heirs/respondents herein have filed execution petition in E.P.No.104 of 2011 and in the said E.P., the petitioners herein have filed E.A.No.382 of 2015, which was dismissed by the trial Court and aggrieved over the same, the present civil revision petition came to be filed.

3. The learned Counsel for the petitioners would submit that as per the mortgage deed, the respondents were permitted to put up a building and to do improvements in the suit property. Thereafter, they had put up two buildings in Plot No.16 and many valuable trees were planted and therefore, they are entitled for value of improvements as per the Travancore Cochin Compensation for Tenants Improvements Act, 1956. Since the said Act is a Special Act, they are not circumscribed by general law and therefore, they are entitled for the benefits under the special law.

4. The learned Counsel for the petitioners would further submit that earlier they had filed E.A.No.84 of 2013, for appointment of Commissioner, which was dismissed by the trial Court and against the same, civil revision petition has been filed and the same is pending. In the said E.A.No.83 of 2013, the value of improvements under Act 10 of 1956 was not sought for and therefore, they have filed the present E.A., only for ascertaining the value of improvements. Therefore, the earlier E.A., application is not a bar to the present E.A., application and without considering the same, the trial Court has dismissed the present E.A., application. Therefore, he prays for allowing this Civil Revision Petition by setting aside the impugned order.

5. Heard the learned Counsel appearing for the petitioners and perused the documents placed on record. Notice to the respondents is dispensed with.

6. A perusal of records would show that the respondents herein/execution petitioners have contested before the lower Court and filed a counter, stating that for the same relief as sought for in E.A.No.84 of 2013, which was dismissed earlier, the petitioners herein have filed E.A.No.382 of 2015, only with a view to drag on



the proceedings and the same was also brought to the knowledge of the lower Court. Since the present E.A., application was hit by the principles of *res judicata*, the trial Court has to dismiss E.A.No.382 of 2015.

7. A perusal of records would show that the petitioners herein have filed E.A.No.84 of 2013 for appointment of Commissioner to identify Plot Nos.14 and 16 and also to measure the improvements as per the standing trees, its yielding & timber value and also to note down the two buildings available therein. But, the same was dismissed on 13.08.2013. Again, the petitioners have come forward with E.A.No.382 of 2015, to assess the value of improvements made in the suit property, as per Act 10 of 1956.

8. Though the petitioners have come forward with the present application to assess the value of the improvements made in the suit property, as per Act 10 of 1956, its object is same as that of the earlier Commissioner application, which was filed to measure the value of improvements. Therefore, a similar petition with a different language for measuring the value of the suit property is not sustainable, as rightly contended by the trial Court.

9. A reading of the Act would show that the tenant or sub-mortgagee are entitled for value of improvements on eviction. As soon as an eviction was ordered or redemption decree was passed and if the value of improvements stated in the decree was paid by the landlord or plaintiff, the status of tenant or mortgagee comes to an end. Therefore, the question of making improvements, after passing decree and payment of value of improvements does not arise.

10. A perusal of the final decree passed by the trial Court, as modified by the first appellate Court, the execution petitions have deposited the value of improvements of Rs.15,000/- and therefore, the question of assessing the value of subsequent improvements in the Execution Court does not arise.

11. As rightly contended by the learned Judge that the circumstances under which reassess or revaluation of an improvements can be ordered, under Act 10 of 1956, is only if the amount of compensation for improvement was made subsequently to the date upto which compensation for improvements has been adjusted in the decree. But, here it is not the case that the amount of compensation was made subsequently during which an improvement has been made and the same was sought to be reassessed.

12. A perusal of the petition shows that the properties are trees and for the same, improvements are sought to be valued again, by appointing a Commissioner, which cannot be entertained and therefore, considering the fact that the value of the improvement has been, as directed by the Court below, already deposited by the execution petitioners into the Court, any improvements made thereafter could not be considered, assuming even if improvements are made.



13. Moreover, there is no specific averments as to the nature of the improvement sought to be assessed and therefore, I am of the view that the learned trial Judge has passed a well considered order, which does not warrant any interference by this Court.

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14. In result, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CSI)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Munsif,  
Kuzhithurai.

+One cc to Mr.K.N.Thampi, Advocate, SR.No.46302

gk  
RL/3C/4P/SV/MMS/SAR1/14/2/2018

Order made in  
C.R.P. (NPD) (MD) No.2220 of 2017  
and  
C.M.P. (MD) No.10862 of 2017

06.02.2018