



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (NPD) (MD)No.1968 of 2018
and
CMP (MD)No.8670 of 2018

1.Girija

2.Velayudham

... Petitioner

Vs.

Valliamma (died)

1.Krishnan
2.Santha
3.Sankaran
Subhasini (died)
4.Sakthidharan
5.Chandrika
6.Brahmanandan
7.Omana

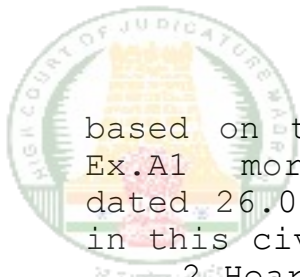
... Respondents

Prayer : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order passed in E.A No.225 of 2012 in E.P No.90 of 2002 in O.S No.499 of 1984 on the file of the Principal District Munsif Court, Kuzhithurai dated 26.06.2018.

For Petitioners : Mr.C.K.M.Apaji
For Respondents : Mrs.Anandhavallir for R2
R5 to R7 - No appearance
R4-Refused.
R1 & R3 - Addressee expired.

ORDER

O.S No.499 of 1984 on the file of the District Munsif Court, Kuzhithurai was instituted seeking a decree for redemption of mortgage and recovery of possession of the suit property from the defendants without depositing the mortgage amount. The suit was dismissed and the First Appeal was also dismissed. But, the judgment and decrees passed by the courts below were reversed in Second Appeal. S.A No.1182 of 1998 was allowed on 08.09.2000. Thereafter, E.P No.90 of 2002 was filed. In the said E.P, the defendants 2 and 3/judgment debtors 2 and 3 filed E.A No.225 of 2012 under Section 47 of CPC for identifying Ex.A1 mortgaged property



based on the boundaries' description before effecting delivery of Ex.A1 mortgaged property. The said E.A was dismissed by order dated 26.06.2018. The correctness of the said order is questioned in this civil revision petition.

2. Heard the learned counsel on either side.

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3. The learned counsel appearing for the revision petitioner reiterated the grounds set out in the memorandum of grounds. As rightly pointed out by the learned counsel appearing for the respondents, this was a suit for redemption of mortgage. The trial court dismissed the suit on the ground that it was not possible to identify where exactly mortgaged property lay. But then, the High Court held that when once the mortgage was admitted by the mortgagee, when the mortgager seeks to redeem the mortgage, he who is in possession is bound to deliver the property to the mortgager.

4. In this case, it appears that two cents of land which were mortgaged got mixed up with the other properties belonging to the mortgagee. The High Court had categorically held that in such an event, it is for the mortgagee who was under an obligation, to keep his own property separate from the mortgaged property. Therefore, the judgment debtors were obliged to demarcate the property in question and handover the possession to the decree holders. The Judgment rendered in S.A No.1182 of 1998 had become final. Therefore, it was not open to the judgment debtors to file an application under Section 47 of CPC. An application under Section 47 of CPC will lie only if the disputed question is yet to be determined. In this case, the High Court while rendering the judgment in the Second Appeal had already determined the said dispute. The mortgagee/judgment debtor was directed to demarcate the property and handover possession of 2 cents of land.

5. Therefore, the court below was justified in holding that E.A No.225 of 2017 filed by the revision petitioners lacks merit. That apart, the very prayer in E.A No.225 of 2017 was that the property in question should be identified based on the description before effecting delivery of Ex.A1 mortgaged property. The property in question has since been delivered. Therefore, nothing survives for further consideration in this civil revision petition. The entire exercise initiated by the revision petitioners has already become infructuous in view of the developments that have taken place in the E.P. The learned counsel appearing for the respondents fairly stated that they have been taken only two cents of land and nothing more. Therefore, this Court holds that there is no merit in this civil revision petition and the same is liable to be dismissed and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS-I)



The Principal District Munsif Court, Kuzhithurai.

+1cc to Mr.J.ANANDHAVALLI, Advocate, SR.No.87635

+1cc to Mr.C.K.M.Appaji, Advocate, SR.No.87393

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