



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.02.2018

PRONOUNCED ON: 21.03.2018

WEB COPY

CORAM

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAMCRP (NPD) (MD) .Nos.894, 900 and 901 of 2013
and M.P. (MD) .Nos.1, 1 and 1 of 2015CRP (NPD) (MD) .No.894 of 2013:Daniel Ingitharaj .. Petitioner/Petitioner/Claimant/3rd party

Vs.

1.Sappani
2.Ooikattan
through his Power Agents,
I) Durai
II) C.Chinnathambi
3.Jeyabalan
4.Sankarakonar
5.Thangam
6.Sengamalam
7.Manoramamal
8.Yesu Thangam
9.Arputham
10.Rajalakshmi
11.Devaraj
12.Neelavadivu

... Respondents/Respondents 2,3,5,7,10 to
17/Plaintiffs 2,4,7,8,9 to 14 and 3 defendants
(Respondents 3 to 12 are exparte in lower Court)

CRP (NPD) (MD) .No.900 of 2013:R.Gandhimathi .. Petitioner/Petitioner/Claimant/
3rd party
Vs.

1.Sappani
2.Ooikattan
through his Power Agents,
III) Durai
IV) C.Chinnathambi
3.Jeyabalan
4.Sankarakonar
5.Thangam
6.Sengamalam
7.Manoramamal
8.Yesu Thangam
9.Arputham



10.Rajalakshmi
11.Devaraj
12.Neelavadivu

... Respondents/Respondents 2,3,5,7,10 to
17/Plaintiffs 2,4,7,8,9 to 14 and 3 defendants
(Respondents 3 to 12 are exparte in lower Court)

CRP (NPD) (MD).No.901 of 2013:

R.Gandhimathi

... Petitioner/Petitioner/Claimant/
3rd party

Vs.

1.Sappani
2.Ooikattan
through his Power Agents,
V) Durai
VI)C.Chinnathambi

... Respondents/Respondents 2 & 3/
Plaintiffs 2 & 3

PRAYER in CRP (NPD) (MD).No.894 of 2013: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to call for the records relating to the fair order and Decretal order dated 09.04.2013 made in E.A.No.573 of 2010 in E.P.No.114 of 2008 in O.S.No.101 of 1985 on the file of the Principal Sub Judge, Tirunelveli and set aside the same.

PRAYER in CRP (NPD) (MD).No.900 of 2013: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to call for the records relating to the fair order and Decretal order dated 09.04.2013 made in E.A.No.499 of 2010 in E.P.No.114 of 2008 in O.S.No.101 of 1985 on the file of the Principal Sub Judge, Tirunelveli and set aside the same.

PRAYER in CRP (NPD) (MD).Nos.901 of 2013: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to call for the records relating to the fair order and Decretal order dated 09.04.2013 made in E.A.No.508 of 2010 in E.P.No.114 of 2008 in O.S.No.101 of 1985 on the file of the Principal Sub Judge, Tirunelveli, and set aside the same.

In three C.R.Ps:

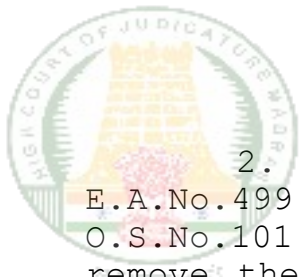
For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.S.Satheeskumar

For Respondents 1 & 2 : Mr.N.Tamilmani
for Mr.M.Veilkanirasu

No Appearance for R4 in CRP (MD) No.900/2013

C O M M O N O R D E R

The Civil Revision Petitions have been filed against the fair order passed in E.A. 573 of 2010, E.A.No.499 of 2010 and E.A.No.508 of 2010 in E.P.No.114 of 2008 in O.S.No.101 of 1985.



2. The Execution Applications in E.A.No.573 of 2010, E.A.No.499 of 2010 and E.A.No.508 of 2010 in E.P.No.114 of 2008 in O.S.No.101 of 1985 have been preferred seeking to pass an order to remove the 6th item of property and 9th item of property which are part of 5th item of property from the execution petition.

3. The case of the petitioners is that the petitioners are the claimants/ 3rd parties in respect of the petition schedule property and the claimants and their predecessors in title have been absolute possession and enjoyment of the suit property even from 28.01.1984 as absolute owners of the property. According to the petitioners, since the sale deed dated 01.11.1995 executed by original plaintiffs in favour of one Baskaran, the vendor of the petitioners have no right in S.No.729/2 and therefore, they filed Execution Applications in E.A.Nos.499 of 2010, 508 of 2010, 573 of 2010 before the executing court.

4. The learned counsel for the petitioners submitted that the grievance of the petitioners is that the Execution Petitioner obtained an order behind back of the petitioners without giving any notice to the petitioners and they forcibly demolished the valuable compound wall and trespassed into the property. The Execution Petitioner under the pretext of obtaining a Registered power of attorney in a fraudulent manner from one Wooikattan has filed the Execution Petition and obtained an order of delivery of vacant possession.

5. The learned counsel for the respondents 1 and 2 submitted that a counter was filed by the respondents 1 and 2 before the executing court denying the right of the petitioners in the 9th item of the property and it is stated that as per the categorical finding in O.S. 101 of 1985, the sale in the name of Arumugam Pillai and Thangam are not valid and it will not bind the respondents 1 and 2 in the said suit in O.S.NO. 101 of 1985. In the said suit filed by Subbammal as plaintiff for partition, preliminary decree was passed. In the said suit, Armugam Pillam and Thangam who are arrayed as defendants 6 and 7 and their sale was decided as not valid one. Hence, based on the ExA.4 and A5 Arumugam Pillai and Thangam have no right to convey the property to T.T.Baskaran and in turn, the sale in favour of T.T. Baskaran is not conveying any right on him and the said Baskaran has no competency to execute the sale deed in favour of the petitioners. The said Arumugam Pillai and Thangam have preferred Appeal Suit and the same was dismissed on 05.10.2001 and there was no Second Appeal preferred by them. An Interlocutory Application was filed for passing final decree and the final decree was also passed and Execution Petition was filed for delivery and delivery was also ordered and hence, at this stage the petitions filed under Sections 47 or under 21 C.P.C are not maintainable.

6. The Executing Court after perusing the entire documents, has given a finding that the petitions filed by the petitioners to remove the 6th item of property and 9th item of property which are part of 5th item of property from the execution petition are not



valid and further there is an error committed by the petitioners in mentioning the specific item of the property and hence, dismissed the said petitions.

7. Heard both sides and perused the materials available on record.

8. On perusal records, it is seen that in view of the judgment passed in O.S. 101 of 1985, final decree was passed and Execution Petition was filed and delivery was also ordered. After giving delivery, the Execution Applications were filed by the petitioners/third parties and they have no title over the property and their vendors have also no right over the property and therefore, in my considered opinion, the trial court has rightly dismissed the petitions, which does not warrant interference by this Court.

9. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To,

The Principal Subordinate Judge,
Tirunelveli.

Copy to:-

The Section Officer, E.R.Section/V.R.Section (2 copies)
Madurai Bench of Madras High Court, Madurai.

+One cc to M/s.S.Satheesh Kumar, Advocate, SR.No.57104

TM
RL/5C/4P/SV/MMS/SAR4/5/4/2018

CRP (NPD) (MD) .Nos.894, 900 and 901 of 2013
and M.P. (MD) .Nos.1, 1 and 1 of 2015