



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) No.948 of 2013

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1.Ramakrishnan Asari
2.Ganesan
3.Arumughom
4.Murugan @ Esakkimadan Asari
5.Ayyappan @ Esakkimadan : Petitioners/Appellants/Petitioners/
Third Parties/Third Parties

-Vs.

1.N.K.Thavaraj : 1st Respondent/1st Respondent/
1st Respondent/Petitioner/Plaintiff
2.Natarajan
3.Esakkimuthu
4.Krishnamoorthy
5.Muthu : Respondents 2-5/Respondents 2-5/
Respondents 3-6/Respondents 2-5/
Defendants 2-5

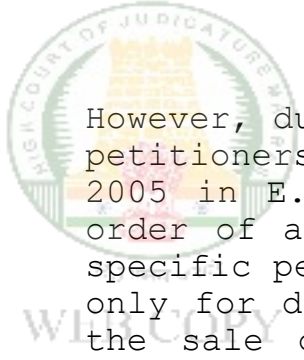
Prayer : Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the fair and decretal order dated 23.01.2013 passed in C.M.A.No.11 of 2010 on the file of the Subordinate Judge, Kuzhithurai, confirming the fair and decretal order dated 11.06.2010 passed in E.A.No.33 of 2005 in E.P.No.92 of 2003 in O.S.No.131 of 1999 on the file of the Principal District Munsif Court, Kuzhithurai and allow the present Civil Revision Petition.

For Petitioners : Ms.J.Anandhavalli
For Respondents : Mr.K.N.Thambi

ORDER

This Civil Revision Petition is filed by the third parties to the suit in O.S.No.131 of 1999 on the file of the Principal District Munsif Court, Kuzhithurai.

2.It appears that the first respondent in this Civil Revision Petition has filed the suit in O.S.No.131 of 1999 on the file of the Principal District Munsif Court, Kuzhithurai, for specific performance of an agreement of sale as against the respondents 2 to 5 in this Civil Revision Petition. It appears that the respondents 2 to 5 in this Civil Revision Petition are the legal heirs of the first defendant in the suit. Since the suit was decreed for specific performance on 06.01.2003, the first respondent appears to have filed an execution petition in E.P.No.92 of 2003 on the file of the Principal District Munsif Court, Kuzhithurai. The execution petition was filed to have the sale deed executed through the Court in terms of the decree in the suit for specific performance.



However, during the pendency of the execution petition, the revision petitioners who are third parties to the suit filed E.A.No.33 of 2005 in E.P.No.92 of 2003 under Order 21, Rule 58 for raising an order of attachment if any in the suit property. In the suit for specific performance, the decree obtained by the first respondent is only for directing the contesting defendant in the suit to execute the sale deed. When the decree is to direct the defendant to execute the sale deed in favour of the first respondent herein on receipt of a sum of Rs.5,000/-. On failure it was further directed that the sale deed should be through Court. In execution of the decree, the revision petitioners cannot maintain the interlocutory application under Order 21, Rule 58 of C.P.C. to raise any attachment as there is no decree for attachment. The Court dismissed the petition holding that the revision petitioners have not proved their title to the property. Aggrieved by the order of the Executing Court dismissing the application, the revision petitioners have preferred an appeal before the Sub Court, Kuzhithurai in C.M.A.No.11 of 2010. The appeal also was dismissed. As against the same, the present Civil Revision Petition has been filed.

3.As pointed out earlier, the petition filed by the revision petitioners is not maintainable under Order 21, Rule 58 of C.P.C. Even if the petitioners have got any independent right they can only file a petition at the time of taking delivery of the property under Order 21, Rule 97 of C.P.C. However, the learned counsel appearing for the contesting respondents stated that it is not even the case of the revision petitioners that they are in possession of the property to file a petition. In such circumstances, this Court do not propose to give any liberty to the revision petitioners to re-agitate their case by way of another round of litigation by resorting to file an application under Order 21, Rule 97 of C.P.C. It is also pointed out that the Courts below have specifically held that the revision petitioners have not proved their title or right.

4.The learned counsel appearing for the revision petitioners submitted that the revision petitioners claim right under one Krishnammal who has executed only a portion of the property out of a larger extent and that the petitioners right to claim title in respect of the remaining property, if any unsold which was in the holding of Krishnammal was not considered or argued by the Courts below. This new argument has been raised for the first time. Hence, this Court does not want to express any opinion with regard to the remaining extent of the property. It is also stated by respondent that the remaining property was also sold by Krishnammal during her life time. The points raised and considered by the Courts below in the application cannot be re-agitated by the revision petitioners. This Court do not want to express any opinion on such rights, as it is projected now by the learned counsel appearing for the petitioners.



5. In the result, the Civil Revision Petition is dismissed.
No costs.

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/True Copy/

Sd/-
Assistant Registrar (Crl. Side)

Sub Assistant Registrar

To

1. The Subordinate Judge,
Kuzhithurai.
2. The Principal District Munsif,
Kuzhithurai.

+1CC to Mr.K.N.Thambi, Advocate, SR.No.62550

C.R.P. (MD) No.948 of 2013
18.04.2018

SRM
ES/SV/MMS/SAR 4/13.06.2018/3P/4C