

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2019

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.PD.Nos.4315, 4316 & 4317 of 2018

1. Umra Begam
2. Ammu Vubera
3. Minor.Amir Taj
4. Minor. Shabigullah Sherif
5. Minor. Inamullah Sherif

Minor petitioners 3 to 5 represented
by their Guardian Next friend and
mother viz., the 1st petitioner

.. Petitioners
in all CRPs.

-VS-

Hiyath Khan

.. Respondent
in all CRPs

Prayer in CRP.PD.No.4315 of 2018: Civil Revision Petitions filed
under Article 227 of Constitution of India against the fair and
decreetal order dated 20.11.2018 passed in I.A.No.408 of 2016 in
O.S.No.73 of 2005 on the file of Sub-Court, Harur.

Prayer in CRP.PD.No.4316 of 2018: Civil Revision Petitions filed
under Article 227 of Constitution of India against the fair and
decreetal order dated 20.11.2018 passed in R.E.A.No.98 of 2016 in
R.E.P.No.43 of 2012 in O.S.No.73 of 2005 on the file of Sub-Court,
Harur.

Prayer in CRP.PD.No.4317 of 2018: Civil Revision Petitions filed
under Article 227 of Constitution of India against the fair and
decreetal order dated 20.11.2018 passed in R.E.A.No.127 of 2016 in
R.E.P.No. 43 of 2012 in O.S.No.73 of 2005 on the file of Sub-Court,
Harur.

For Petitioners : Mr. R. Neelakandan

For Respondent : Mr. R. Balasubramaniam

COMMON ORDER

The petitioners in the Revision claims themselves as the legal heirs and one of the co-sharers of the subject property. The total extent of lands of the subject property is 4 acres.

2. The husband / father of the petitioners herein filed a suit in O.S.No.251 of 2013 claiming partition and also a declaration seeking to set aside the sale deeds executed through the decree passed in a specific performance suit.

3. Now that the petitioner's husband as well as the mother in law of the petitioner / 1st defendant in the suit have passed away. The unassailable fact is that the petitioners are entitled to 2/8th share in the total property. That means they are entitled to one acre.

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4. Learned counsel for the petitioners would vehemently contend that the respondent has purchased 2.65 acres in the undivided property. The 2.65 acres has to be identified at the first instance and thereafter only, possession can be delivered.

5. Admittedly, the matter is pending before the Execution Court for delivery of possession.

6. Learned counsel for the respondent would contend that admittedly his vendors are entitled to 2.6 ares of land out of the total extent of 4 acres. They entered into a sale agreement of the property measuring about 2.6 acres with definite boundaries. As long as the petitioners' share of the property is available, they cannot object to the possession of the property. The father of the petitioners also filed a suit for partition share as well as setting aside the sale deeds. They have to prosecute that case and only after getting an order from the Court, they can object the possession to be delivered by the execution court.

7. From the consideration of all these facts, it is clear that the petitioners are entitled to one acre of the total extent of four acres land as their share and the respondents are entitled to 2.65 acres of land having purchased the same through a decree passed in a specific performance suit. It only remains to identify the respective shares of both the parties. At this stage, the petition to set aside the exparte decree as well as the petition under section 47 CPC in an execution petition are not maintainable. Since the matter is

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clarified, it is open to the parties to work out the remedies before the execution Court to appropriate their respective shares, to which they are legally entitled.

8. The Civil Revision Petitions are disposed of with the above observations. Consequently, connected CMP.No.23628 of 2018 is closed.

11.07.2019

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Index: yes/No

Internet: yes/No

To

The Sub-Court, Harur.

NOTE: Issue order copy on 29.07.2019**WEB COPY****C.R.P.PD.Nos.4315, 4316
& 4317 of 2018**



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