



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD) Nos.1336 & 1337 of 2011

and

M.P(MD) No.1 of 2011

D.Rajeshwari

... Petitioner/Petitioner/Respondent/
Defendant in Both C.R.Ps.,

-Vs-

1.Raman (Died)

2.S.Andippan

3.S.Arumugam

4.R.Ravi

5.R.Thangavel

6.R.Rathinavel

7.R.Ganesan

8.R.Nagappan

9.R.Selvamani

10.R.Jegadeesan

(RR 4 to 10 are brought on record as

Lrs of deceased R1 vide Court

Order dated 16.10.2019 made

in MP(MD) 1 to 3 of 2013)

... Respondents/Respondents 2, 4,5/
Petitioners 2, 4, 5/
Plaintiffs 2, 4, 5
in both C.R.Ps.

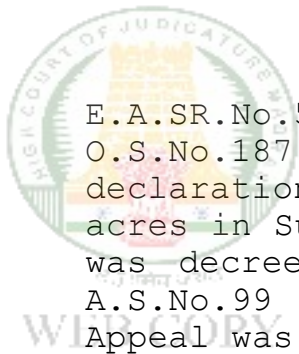
Prayer in both C.R.Ps.,: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 08.02.2011 in unnumbered E.A.Sr.No.2019 of 2008 and E.A.SR.No.534 of 2011 in E.P.No.8 of 2008 in O.S.No.187 of 1990 on the file of the First Additional District Munsif Court, Trichy and allow the present Civil Revision Petition.

For Petitioner	:	Mr.N.C.Ashok Kumar
For R2	:	Mr.R.Sundar
For R7	:	Mr.V.Panneerselvam
		for M/s.C.S.Associates
For R4 to R6 & F8 to R10	:	No appearance

C O M M O N O R D E R

The judgment-debtor, who had suffered a decree for delivery of possession, has come up with these revisions challenging the rejection of two Execution Applications filed by him in

<https://hcservices.ecourts.gov.in/hcservices/>



E.A.SR.No.524 of 2011 and E.A.SR.No.2019 of 2008. A suit in O.S.No.187 of 1990 was filed by the respondents/plaintiffs seeking declaration of title and recovery of possession in respect of 1.04 acres in Survey No.72/1M, Thayanur Village, Trichy Taluk. The suit was decreed on 06.04.1999. An appeal filed by the defendant in A.S.No.99 of 1999 was dismissed by the appellate Court. A Second Appeal was filed in S.A.No.189 of 2000 and the same was withdrawn on 06.10.2007. Thereafter, the decree holder lodged Execution Proceedings in E.P.No.8 of 2008. Pending Execution Petition, the petitioner/judgment-debtor had filed the above two Execution Applications with the following prayers.

Prayer in E.A.No.534 of 2011 reads as follows:-

"It is therefore prayed that this Hon'ble Court may be pleased to enquire into this matter and declare that the decree passed in O.S.No.187/1990 on the file of the District Munsif, Trichy dated 06.04.1999 is Null and Void and cannot be executed against this petitioner and to pass such other reliefs as the Court may think fit and proper to the circumstances to the case and in the interest on the petitioner and thus render justice."

Prayer in E.A.SR.N.2019/2008 reads as follows:-

"It is therefore prayed that this Hon'ble Court may be pleased to appoint an Advocate Commissioner forthwith to inspect the suit property with the assistance of town surveyor and note down the physical features, take down measurements draw a plan to locate boundaries of suit property and to submit a report along with surveyor report and sketch and plan and thus render justice"

2. The main contention of the judgment-debtor in these Execution Applications is that the decree-holder, having obtained a decree of delivery of 1.04 acres in Survey No.72/1M, is attempting to take delivery of her property in Survey No.72/2A. The Executing Court rejected the applications on the reasoning that the dispute relating to the identity of the property can be gone into only after the delivery is ordered and the Court Amin finds that the property subject matter of the suit, namely 1.04 acre in Survey No.72/1M is not identifiable. Therefore, the Executing Court rejected the applications as pre-mature. I don't find any irregularity or jurisdictional error in the order of the Executing Court.

3. Having suffered a decree, the petitioner is now attempting to avoid execution by raising the dispute regarding the identity of the property. Once the delivery is ordered in execution, it is for the Court Amin to identify the property subject matter of the suit and deliver it to the decree-holder. If it is unable to identify, further proceedings under Order 21 C.P.C., shall follow. Therefore,



I do not find any merit in these Civil Revision Petitions and they are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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// True Copy //

Sd/-

Assistant Registrar (AS)

Sub Assistant Registrar(CS)

am

To

1. The I Additional District Munsif Court,
Trichy.

2. The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.R.SUNDAR, Advocate (SR-103783[F] dated 06/12/2019)

+1 CC to Mr.N.C.ASHOK KUMAR, Advocate (SR-103780[F] dated 06/12/2019)

+1 CC to Mr.V.PANNEER SELVAM, Advocate (SR-103930[F] dated 06/12/2019)

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VB(20.12.2019) 3P 7C