



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2019

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THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD) No.2265 of 2013

and

M.P (MD) No.1 of 2013

1.Anthony Muthu Nadar
2.Savariyaye

... Petitioners/Respondents 1 & 3/
Defendants 1 & 3

-Vs-

Prakasam (died)
Arul Prakasam (died)
1.Vanaja Arockiasamy
2.Gowsalyaraj
3.Balamohan
4.Thilakam
5.Vijaya

... Respondents/Petitioners/Respondents/
Lrs of Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal Order passed in E.A.No.67 of 2012 in E.P.No.14 of 2009 in O.S.No.27 of 1985, on the file of the learned District Munsif, Sathankulam, dated 04.09.2013 and allow this Civil Revision Petition.

For Petitioners : Mr.R.Balakrishnan

For Respondents : Mr.George Stephen
for Mr.S.Siva Thilakar

ORDER

The defendant in O.S.No.27 of 1985, who suffered a decree for delivery of possession, attempted to thwart execution by taking a plea that the suit property has not been properly described in the suit and seeking for appointment of a commissioner in the Executing Court. The suit in O.S.No.27 of 1985 was filed for the relief of declaration and for recovery of possession of the 'B' schedule property. The suit came to be decreed and challenges by way of appeal and second appeal were rejected. The decree-holder nearly 18 years after the decree, filed E.P.No.14 of 2009 seeking delivery of



possession. The petitioner herein/ judgment- debtor, filed an application in E.A.No.67 of 2012 seeking appointment of a Commissioner on the grounds aforesaid. The Executing Court rejected the petition. Aggrieved, the Judgment debtor has come up with the Civil Revision Petition.

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2. I have heard Mr.R.Balakrishnan, learned counsel appearing for the petitioner and Mr.George Stephen, learned counsel representing Mr.S.Siva Thilakar, for the respondent.

3. Mr.R.Balakrishnan, learned counsel appearing for the petitioner would vehemently contend that the decree for possession could not be executed when the suit property has not been properly described in the plaint schedule.

4. Contending contra, the learned counsel for the respondents would submit that the same plea was raised in the suit by the petitioner and the same was rejected. Having failed before the trial Court as well as the appellate court and this Court in second appeal, the petitioner cannot contend that the property description is not proper in the execution proceedings.

5. I have considered the rival submissions.

6. As rightly pointed out by the learned counsel for the respondents the petitioner has raised the very same issue in the suit and the same was decided against. Having failed before the trial court in the suit, the petitioner cannot be allowed to re-agitate the same issue now in the execution proceedings, seeking appointment of a commissioner. The trial court had taken into account the pleadings and had come to a conclusion that the claim of the petitioner cannot be sustained. I do not find any material irregularity or error of jurisdiction in the the order of the courts below. I do not find that there is scope for interference with the order of the Courts below under Section 115 of C.P.C. Therefore, the Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

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To

The District Munsif,
Sattankulam.

Copy to:

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

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-103225[F] dated
04/12/2019)

C.R.P. (NPD) (MD) No.2265 of 2013
03.12.2019

JMN(26.12.2019) 3P : 5C