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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P. (PD) (MD) No.2776 of 2015

and

M.P. (MD) No.1 of 2015

1.Munusamy
2.Jeyasree

.. Petitioners

Vs.

Sivasankaran

.. Respondent

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 26.10.2015 passed in I.A.No.133 of 2015 in O.S.No.21 of 2011 on the file of the learned Principal Sub Judge, Thanjavur.

For Petitioners
For Respondent

: Mr.S.Ramasamy
: Mr.P.Thiagarajan

ORDER

Heard Mr.S.Ramasamy, learned counsel appearing for the petitioners and Mr.P.Thiagarajan, learned counsel appearing for the respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.133 of 2015 in O.S.No.21 of 2011 dated 26.10.2015 on the file of the learned Principal Sub Judge, Thanjavur.

3.The petitioners herein are the defendants and the respondent herein is the plaintiff in the suit. The respondent herein filed a suit in O.S.No.21 of 2011 for a prayer of specific performance and for possession and the suit was decreed by the trial Court. The respondent herein filed a petition in I.A.No.133 of 2015 seeking permission to amend the decree in O.S.No.21 of 2011. The petition was allowed by the trial Court. Against which the petitioner has filed this revision petition.

4.On the side of the petitioners, it is stated that the respondent has filed a petition in I.A.No.133 of 2015 for carrying out amendment in the decree passed in O.S.No.21 of 2011. The petition was allowed by the trial Court and that the revision



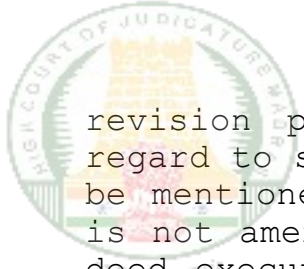
petitioners filed revision petitions in C.R.P.(MD)Nos.1022 and 1023 of 2015 before this Court and this Court has set aside the order passed in E.P.Nos.71 and 34 of 2014 in O.S.No.21 of 2011 and the respondent herein is directed to file an application before the trial Court seeking amendment of the decree, if he is so advised.

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5.It is further stated that in I.A.No.133 of 2015, the four boundaries and the measurement of the properties are not properly stated. No specific reasons are stated in the affidavit and in the petition and that what are the amendments to be carried out are not explained in both the affidavit and in the petition. It is stated that the revision petitioners has filed a detailed counter regarding the four boundaries and others. The trial Court has failed to consider the counter. If the property is not clearly described, the delivery cannot be ordered and prayed the impugned order to be set aside.

6.On the side of the respondent, it is stated that the respondent has filed a suit in O.S.No.21 of 2011 for specific performance against the revision petitioners on the basis of a sale agreement dated 29.08.2007 and the suit was decreed on 06.02.2014. No appeal is filed against that Judgment and decree passed in O.S.No.21 of 2011. It is stated that some of the recitals in the Judgment is left unmentioned in the decree passed by the trial Court and the respondent filed a memo to carry out the necessary amendments and the trial Court carried out the amendments. Challenging the same, the revision petitioners filed C.R.P.(MD) Nos.1022 and 1023 of 2015 before this Court and this Court directed the respondent to file an amendment petition instead of memo for amendment to be carried out in the decree. Subsequently the respondent filed a petition in I.A.No.133 of 2015 and on 29.10.2015, the petition was allowed by the trial Court and the fresh E.P. petition was filed for execution of the sale deed in E.P.No.1 of 2016 and on 11.11.2016, E.P. was ordered and Section 47 application was filed and numbered as E.A.No.7 of 2013. The sale deed was executed in favour of the respondent on 30.01.2017 and the respondent filed a petition in E.P.No.67 of 2017 seeking delivery of possession and the delivery was ordered on 15.11.2017 and the property was delivered to the decree holder on 10.01.2018. The revision petitioners filed a revision petition in C.R.P.(MD)No.24 of 2018 challenging the delivery order dated 15.11.2017 and the same was dismissed and the delivery was recorded on 01.02.2018. Section 47 application filed by the revision petitioners was dismissed on 26.11.2018. C.R.P.(MD)No.279 of 2019 was filed against the order passed on 26.11.2018 in E.A.No.7 of 2018 and the application under Section 47 was dismissed by this Court on 12.02.2019. Just to harass the respondent, the petitioners have filed frivolous petitions.

7.On the side of the respondent, it is stated that there is no dispute regarding the boundaries and in the suit, the four boundaries and measurements are clearly given. The description of the property is not disputed in the written statement filed by the

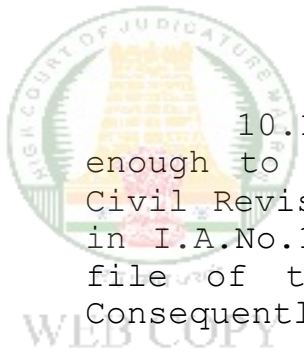


revision petitioners. The amendment in the decree is only with regard to some of the recitals in the Judgment which are left out to be mentioned in the decree. The schedule of property in the decree is not amended and the schedule property is not disputed. The sale deed executed by the Court is with regard to the same schedule of property and the same issue regarding the boundaries was already raised by the revision petitioners. Hence, this Court in an order in C.R.P.(MD)No.24 of 2018 dated 11.01.2018, has given the following finding:

"This mistake probably is a typographical error and therefore, the Suit was rightly filed in respect of the suit property which can be identified on ground. It is for this reason, the petitioners have not raised any objection, when the Suit was decided on merits. Not even an issue was raised with regard to identity of the property on ground. Therefore, the trial Court rightly allowed the application for delivery of the property and rejected the contentions raised by the petitioners mainly on the ground that the Executing Court cannot go behind the Decree. Since the petitioners have not challenged the Decree, the petitioners cannot raise any objection with regard to the identity of the property on the basis of the original sale agreement. As pointed out earlier, the suit property can be identified on ground. The Suit property and the property agreed to be sold must be the same and therefore no issue regarding identity of the property was raised at the time of trial. The petitioner ought to have raised during trial. Since the discrepancy now pointed out by the petitioners appears to be a typographical mistake, they have not raised any issue on this. It is not open to the petitioners to raise this point now after this length of time."

8.Again the same issue was taken by this Court in C.R.P. (MD)No.279 of 2019 dated 12.02.2019. A perusal of the amended decree clearly reveals that the amendment carried out in O.S.No.21 of 2011 is not with regard to the description of boundaries of the suit properties. A perusal of the suit properties described in the plaint and in the decree in E.P.No.67 of 2017 and in the sale deed reveals that there is no discrepancies with regard to the suit properties.

9.Even in the written statement filed by the revision petitioner, there is no dispute raised regarding the description of the property. Though this Court in its order in C.R.P.(MD) Nos.24 of 2018 and 279 of 2019, has dealt with the same issue, the petitioner has come forward with the same averments and filed this petition which is not maintainable. Already decree is passed and sale deed was executed and delivery was recorded.



10. In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. This Civil Revision Petition is **dismissed** by confirming the order passed in I.A.No.133 of 2015 in O.S.No.21 of 2011 dated 26.10.2015 on the file of the learned Principal Sub Judge, Thanjavur. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

Mrn

To

1.The Principal District Judge,
Thanjavur.

+1 CC to M/s.P.THIAGARAJAN, Advocate SR-64623.

+1 CC to M/s.S.RAMASAMY, Advocate SR-64762.

C.R.P. (PD) (MD)No.2776 of 2015
30.04.2019

CS: (04/06/2019) 4P C