

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 28.02.2020

ORDER PRONOUNCED ON : 06.03.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD) No.3255 of 2012

and

M.P.No.1 of 2012

1.A.Jayaraman
2.A.Murugan
3.Loganathan
4.Lakshmanan
5.A.Ramu
6.A.Kumar (Died)

[6th appellant and 6th respondent died and 1st appellant is recorded as L.Rs of the deceased 6th appellant and 6th respondent viz.A.Kumar and A.Kannammal vide Court order dated 28.02.2020 made in C.R.P.3255/2012 (present in Court) as per memos dated 28.02.2020 are recorded (TKRJ)]

... Petitioners

...Versus...

1.Thiru.Velayudham
2.Thiru.Saravanabavanathan
3.Thiru.Sivakumar

Arumugha Mudaliar (Died)

4.Chinnaraj
5.A.Parvathi
6.A.Kannammal (Died)

... Respondents

PRAYER:This Civil Revision Petition has been filed under Section 115 of C.P.C, against the order and decretal order dated 16.03.2012 made in E.P.No.5 of 2007 in O.S.No.103 of 1997 on the file of Principal District Munsif Court, Kancheepuram.

For Petitioners :: Mr.T.Sathiyamoorthy

For Respondents :: No appearance

ORDER

The Judgment-Debtor is the revision petitioner herein.

2. The first respondent herein filed a suit in O.S.No.103 of 1997 in respect of 'A', 'B', 'C', 'D' portion marked in the plaint copy is a right of way to the property 'A', 'B', 'C', 'D' portion and after contest, the suit was decreed on 22.01.2005. The Execution Petition has been filed in E.P.No.5/2007. The Judgment-Debtor has filed a counter alleging that after decree, the Decree-Holder has sold the property and marked as Ex.R1-Sale Deed. After comparing the schedule of the property, the Executive Court rejected the claim of the respondents and ordered the E.P for delivery and hence, this Civil Revision Petition.

3. Heard the learned counsel for the petitioners.

4. The suit was decreed based upon the Advocate Commissioner's Report Ex.C1 wherein 'A', 'B', 'C', 'D' portions have yet to be incorporated by the defendants and also put up certain constructions. Besides, 'A', 'B', 'C', 'D' portion in the suit property also includes 5 feet of sanitary land. After contest, the suit was decreed on 28.01.2005. The Decree-Holder has held the property on 19.04.2010 by a Sale Deed and hence, in the absence of the subsequent purchaser, the original Decree-Holder cannot prosecute and continue the Execution Proceedings. The Trial Court has compared the schedule of the property found in the decree as well as the schedule of the property in the said sale deed and observed that the suit property mentioned in the decree as T.S.1387 bearing Door No.12A, 12A1. 'B' and 'C' and in that the 'A', 'B', 'C', 'D' portion measuring East to West 6 feet and North to South 24 feet. But, the schedule of property in Ex.B1 is mentioned as S.No.1387/B and 1387/4 and it has been further stated that backside of the portion in Door No.12A.

5. The suit property is different from the property under Ex.R1 since the boundaries and other measurements are does not tally with each other and accordingly, held that in the absence of any positive documents to show that what was sold under Ex.R1 is the suit property and the trial Court has rejected the claim. After comparing the schedule of the property in the decree as well as the suit and the rough plan sketch attached to be plaint and Exs.C1 and C2, I find that the finding rendered by the Executive Court is just and necessary does not warrant interference at the appellate stage.

6. Accordingly, this Civil Revision Petition is dismissed. No costs. The order passed by the Executive Court is hereby confirmed. Consequently, connected Miscellaneous Petition is closed.

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06.03.2020

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

The Principal District Munsif Court, Kancheepuram.

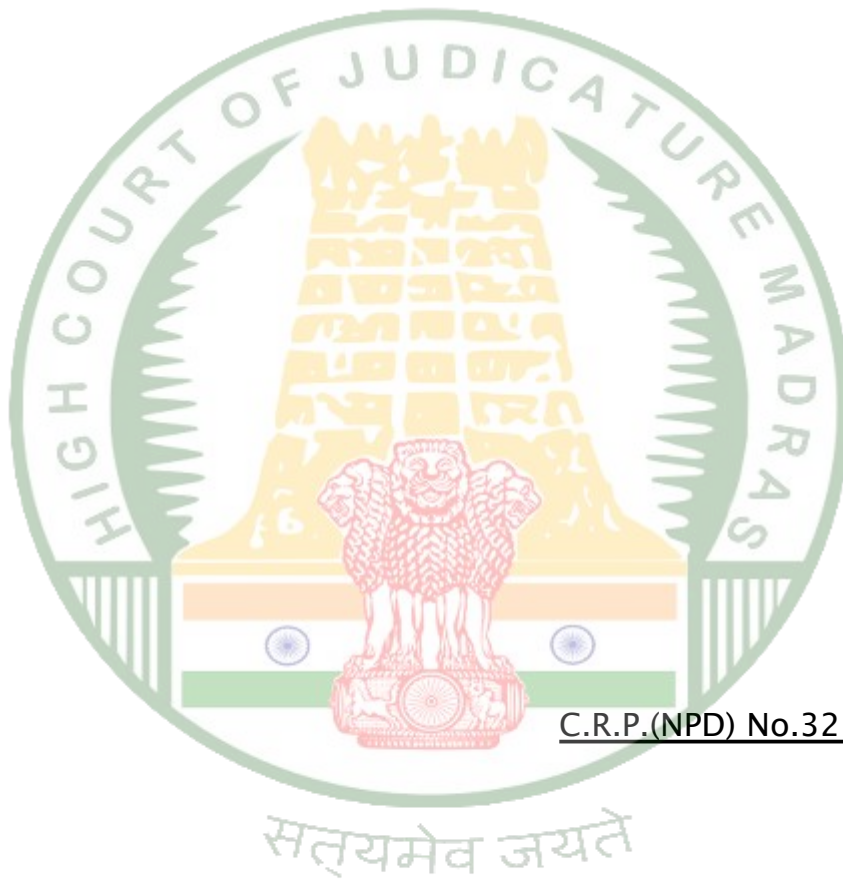


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RMT.TEEKAA RAMAN,J.,

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order in
C.R.P.(NPD) No.3255 of 2012

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