

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.08.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CRP (PD) NO.1482 of 2020
and C.M.P.No.8694 & 8695 of 2020

Mr.S.Krishnakumar

... Petitioner

Vs.

M/s.SMT Property Developers Private Limited,
Rep. by its Director Mr.Manoj Kumar Fulfagar,
S/o.Mr.Parasmal Fulfagar,
having office at
No.14, Ramanan Road, Sowcarpet,
Chennai – 600 079.

... Respondent

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order dated 01.07.2020 made in I.A.No.334 of 2020 in O.S.No.110 of 2020 on the file of the learned Additional District Munsif at Alandur, allow the civil revision petition.

For Petitioner : Mr.F.Deepak
For Respondent : Mr.P.S.Amalraj

ORDER

This Civil Revision Petition is directed against the ex parte injunction order granted in I.A.334 of 2020 in O.S.No.110 of 2020 dated 01.07.2020.

2. According to the petitioner, his parents namely T.M.V.Subbiah and S.Rajalakshmi are the absolute owners of the property measuring to an extent of 3.94 acres. Out of that, they have sold 1.10 acres in favour of one Lakshmi and Sarala Kathiresan on 23.2.2004. Thereafter, they executed the Power of Attorney in favour of one C.Ravindran vide registered document No.248 of 2004. This Power of Attorney has sold the property to an extent of 2.38 acres in favour of the respondent herein vide document No.3330 of 2004 dated 17.06.2004. Thus, the said Lakshmi and Sarala Kathiresan along with the respondent herein purchased 1.10 acres and 2.38 acres respectively from the parents of the petitioner. Thereafter, the parents of the petitioner by Sale Deed No.140 of 2006 dated 12.01.2006 sold remaining 46 cents of land. After realising that they have no title over that 46 cents, they have cancelled the Sale Deed No.140 of 2006 by cancellation of sale deed vide registered document No.146 of 2006 dated 13.01.2006.

3. The petitioner admits that the title of purchasers namely R.Lakshmi and Sarala Kathiresan as well as the respondent is in respect of 1.10 acres and 2.38 acres. The petitioner claims that by document No.78 of 2015 dated

06.01.2015, the parents of the petitioner have settled remaining 46 cents in his favour. Now, since he could not clearly identify the property with the available revenue records, filed a suit against the respondent not to interfere with his possession in respect of 4.6 cents in O.S.No.97 of 2020. Simultaneously, the respondents also filed another suit in O.S.No.110 of 2020 for the relief of permanent injunction.

4. It is not disputed that the respondents' title is admitted by the petitioner. The only problem is identification of the property by the petitioner. It is the contention of the respondents that the parents of the petitioner by cancellation of sale deed vide document No.146 of 2006 dated 13.01.2006 affirms that they did not have title over the property to the extent of 46 cents. While so, the petitioner claims title over the same. However, the fact remains that the petitioner is not disputing the extent of land which is sold to the respondents. Hence, it only requires to identify the property sold to the respondent as per the boundaries mentioned in the Sale Deed and affirm delivery of possession made in their favour.

5. Though the petitioner claims that he had share in the property and for that reason only the sale made in respect of 46 cents was cancelled by his parents, ultimately rely on the settlement deed executed by his parent for deriving title. Be that as it may, if the property admittedly conveyed to the respondents along with common passage as described in the sale deeds are demarcated. The petitioner will be entitled to whatever balance extent remain above ground.

6. Since, the facts are not disputed and title of the respondents is admitted, I do not find any infirmity in the interim injunction granted in favour of the respondents. However, to give quietus to this issue, the trial Court is directed to take up the application to be filed by the petitioner for appointment of an Advocate Commissioner to measure the property of the respondents as per the boundaries described in the Sale Deeds and affirming their possession, pass appropriate orders as indicated above within a period one month from the date of receipt of a copy of this order.

7. With the above terms, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

24.08.2020

asi/rst

Index : Yes/No

Speaking Order/ Non Speaking Order

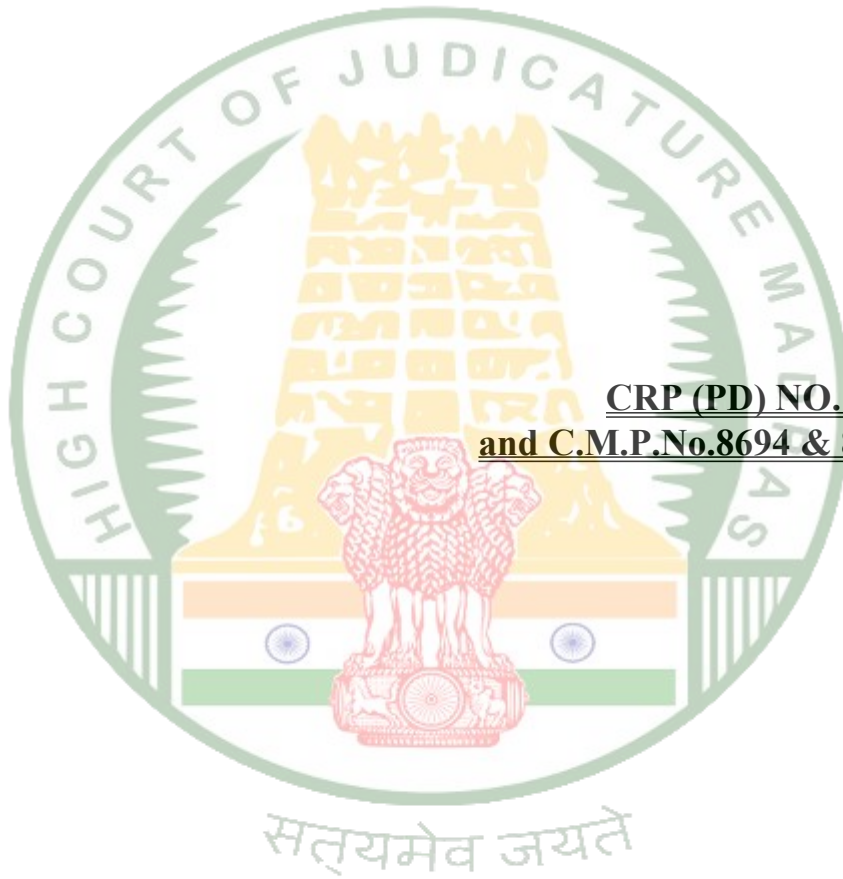
To

The Additional District Munsif,
Alandur



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M. GOVINDARAJ. J.,
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