

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.NPD.No.3852 of 2019

and

CMP.No.25402 of 2019

N. Kamal

... Petitioner

Vs.

1. S. Rajeswar Rao

2. Subasini

3. Aarthi

4. S. Noha

R. Nataraja Naicker(died)

Krishnaveni (died)

Ravi (died)

Vijayakumar (died)

6. Nirmala

7. Jamuna

8. Udhayakumar

9. R. Geetha

10. Minor Vasanth

11. Minor Sarmila

12. V.Parvathi

13. Minor Jeeva

14. Minor Charulatha

... Respondents

Prayer :- This Civil revision has been filed under Article 227 of the Constitution of India to set aside the order and decretal order passed by the learned District Munsif, Thiruvottiyur in E.A.No.174 of 2018 in E.P.No.13 of 2016 in O.S.No.1080 of 1997 dated 03.08.2019.

For petitioner : Mr. S.V. Karthikeyan

ORDER

This Civil Revision Petition has been filed against the order dismissing the application filed by the petitioner to appoint an Advocate Commissioner to survey, identify and also note down the physical features of the property in the Execution Petition.

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2. The petitioner is the 9th defendant. The respondents 1 to 4 herein filed a suit in O.S.No.1080 of 1997 on the file of the District Munsif cum Judicial Magistrate, Thiruvottiyur for recovery of possession and an exparte decree has been passed on

09.08.2005. Thereafter, Execution Petition was filed in the year 2016, in which, the petitioner herein filed an application to appoint an Advocate Commissioner to note down the physical features of the suit schedule property and also to identify the property on the ground that the suit survey number differs and that application came to be dismissed. Now, challenging the same, the present revision has been filed.

3. Heard the learned counsel for the petitioner and perused the materials available on records carefully.

4. The exparte decree has been passed, in the year 2005, in the suit for recovery of possession. The petitioner herein has not challenged the exparte decree and the same has become final. Thereafter, Execution Petition has been filed by the decree holders. At this stage, the petitioner herein filed an application to appoint an Advocate Commissioner to identify the property with the help of a Surveyor and also to note down the physical features of the property. The grievance of the petitioner is that in the suit, the description of the property has not been given correctly. Hence, the property should be identified through an

Advocate Commissioner with the help of surveyor. It is settled law that the Execution Court cannot go beyond the decree and the Court has to execute the decree as it is. Hence, at this stage, by identifying the property no useful purpose will be served. The Court below, considering the same, rightly dismissed the application. Hence, I find no illegality or irregularity in the order passed by the Court below and I find no merit in the revision.

5. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

mrp

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

12.02.2020

To

The District Munsif Court, Thiruvottiyur

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V.BHARATHIDASAN, J.,

mrp



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