

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) Nos.84, 86, 89 and 90 of 2020
and C.M.P. No. 514 of 2020

1.Marimuthu @ Manimuthu
2.Periyan
3.Chandran
4.Kandasamy
5.Venkatachalam
6.Kullammal
7.Palaniammal
8.Santhi
9.Palaniammal
10.Mani

Venkatachalam

Petitioners /
Judgment Debtors
[in all C.R.Ps]

Respondent /
Decree Holder
[in all C.R.Ps]

COMMON PRAYER: Civil Revision Petitions have been filed under Section 115 of the Code of Civil Procedure, to set aside the fair and final orders dated 20.09.2019 made in R.E.A.Nos.43, 39, 42 and 40 of 2018 respectively in R.E.P.No. 17 of 2017 in O.S.No.542 of 2005 on the file of the learned II Additional District Munsif, Salem.

For Petitioners : Mr.D.Sathya

[in C.R.P.Nos.84,89 & 90 of 2020]

For Petitioners : M/s.Zeenath Begum
[in C.R.P.No.86 of 2020]

For Respondent : Mr.R.Poovaligan
[in all C.R.Ps] for M/s. Genicon and Associates

COMMON ORDER

These Civil Revision Petitions are filed to set aside the orders dated 20.09.2019 in R.E.A.Nos.43, 39, 42 and 40 of 2018 respectively in R.E.P.No.17 of 2017 in O.S.No.542 of 2005 on the file of the learned II Additional District Munsif, Salem.

2. R.E.A.No.39 of 2018 has been filed by the judgment debtors for setting aside the amin's report. R.E.A.No.40 of 2018 has been filed not to record the delivery of the properties effected by the amin as per his report dated 04.07.2018 by the judgment debtors. R.E.A.No.42 of 2018 and R.E.A.No.43 of 2018 have been filed by the decree holder to order delivery of two houses in Survey No.15/3, with the help of Police. These applications were contested by the respective parties. On considering the submissions of both parties, the learned II Additional District Munsif, dismissed R.E.A.Nos.39 and 40 of 2018 and R.E.A.Nos.42 and 43 of 2018

were allowed. Against the orders passed in these applications, the judgment debtors have preferred these Civil Revision Petitions.

3. The learned counsel for the petitioners / Judgment Debtors submitted that, the suit properties were shown as vacant land. Now, the suit properties along with building, is sought to be taken possession. That apart, the learned counsel submitted that, there is no partition of the suit properties and the suit properties are indivisible in nature and therefore, it cannot be delivered. However, without considering these objections made by the judgment debtors, the learned II Additional District Munsif, dismissed the applications filed by the judgment debtors and allowed the applications filed by the decree holder.

4. In response, the learned counsel for the respondent / decree holder submitted that, the suit was filed in the year 2005. The petitioners contested the suit, the judgment was delivered on 13.02.2012. There was no appeal filed and therefore, the judgment and decree in O.S.No.542 of 2005 has become final. It is not open to the petitioners to

raise these contentions now. Therefore, he prayed for confirming the order of the learned II Additional District Munsif and for dismissal of these petitions.

5. Considered the rival submissions and perused the records.

6. It is seen from the plaint that, the suit was filed by the decree holder / respondent seeking delivery of the suit properties. There are 3 items in the suit properties. They are (1) an extent of 3.65 acres out of 10.96 acres in Survey No.15/3 of Mayilapatti Village, Shevaroyan Hills, Yercaud Taluk; (2) An extent of 0.37 acres out of 5.90 acres in Survey No.9/1C of Mayilapatti Village, Shevaroyan Hills, Yercaud Taluk; and (3) an extent of 0.25 acres out of 1.34 acres in Survey No.6/5B of Mayilapatti Village, Shevaroyan Hills, Yercaud Taluk. For all these three properties, specific four boundaries are given.

7. The suit was contested by the petitioners and the suit was decreed on 13.02.2012. Admittedly, the petitioners have not preferred any appeal against the judgment and decree in O.S.No.542 of 2005 and it had

become final. Then, the respondent filed R.E.P.No.17 of 2017. The learned counsel for the respondent submitted that, except the property in Survey No.15/3, other two properties have been delivered to the respondent. The issue, is only with regard to the property in Survey No.15/3.

8. Now, the contention made by the learned counsel for the petitioners is that, this property is an indivisible property. It cannot be identified. Next contention is that, there is a house in this property and therefore, when the decree was for delivery of vacant land, the respondent cannot seek the delivery of house property also. So far as these contentions, it is not known whether these contentions have been raised in the written statement before the lower Court. It appears that these contentions have not been raised before the lower Court and it is not open to the petitioners to raise these contentions now. Even otherwise, as already said, the property in Survey No.15/3, is clearly described with 4 boundaries. Therefore, it is not a problem in identifying the property.

9. With regard to the submission that there is a house in the property, admittedly, the existence of house is not stated in the plaint

description of property. It is not known when this house was constructed. It is not clear whether it was constructed before filing the suit or after filing the suit. If the house was in existence before filing the suit, the existence of the house would have been mentioned in the plaint. When it is not mentioned, it has to be presumed that the house was not in existence, when the suit was filed, and the house was constructed subsequent to the filing of the suit. In that case, the respondent is entitled to seek delivery of property with the improvements made thereon. At best, the petitioners can claim compensation for the improvements, if any, made in the suit properties.

10. In such view of the matter, this Court finds no reason to interfere with the orders of the learned II Additional District Munsif, Salem, in R.E.A.Nos.43, 39, 42 and 40 of 2018 respectively in R.E.P.No. 17 of 2017 in O.S.No.542 of 2005 dated 20.09.2019 and the orders are confirmed.

11. Resultantly, these Civil Revision Petitions are dismissed.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

30.09.2021

Speaking order / Non-speaking order
Index : Yes / No

psa / sri

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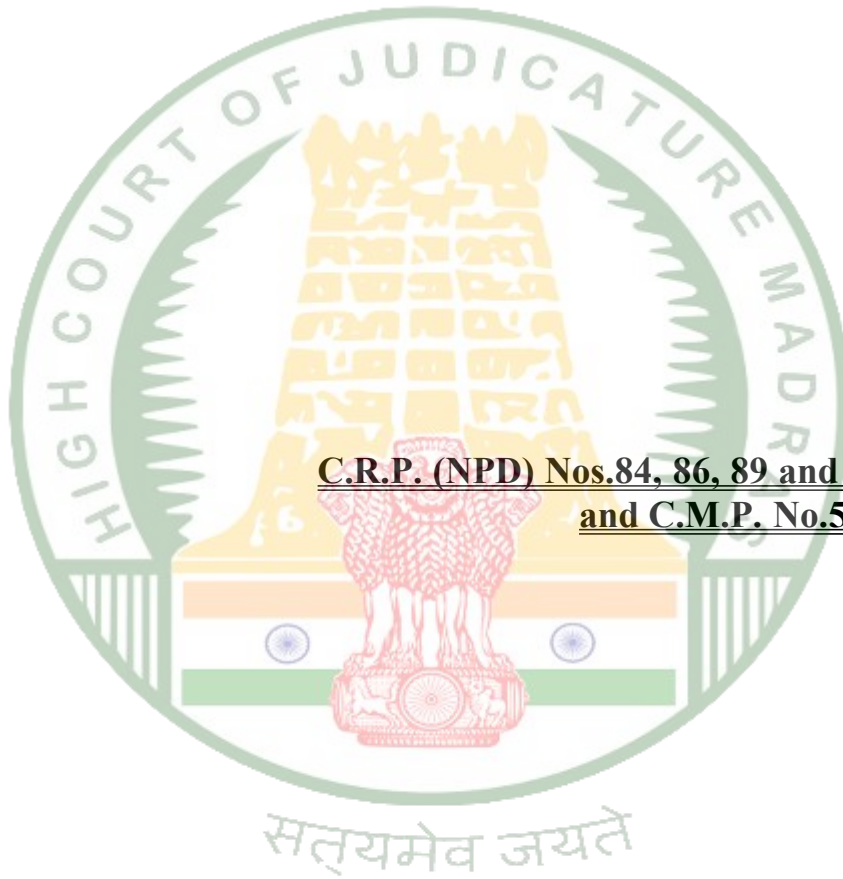
The II Additional District Munsif,
Salem.



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G.CHANDRASEKHARAN, J.

psa / sri



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