

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD)No.1847 of 2008
and M.P.Nos.1 of 2008 & 1 of 2014

1. R.Raghunath
2. Keerthana Gayathri
3. Minor. Vanthana Gayathri
Rep by NF & father &
Guardian R.Raghunath

... Petitioners

Vs.

1. A.Sampathraj
2. R.Jayakumari
3. Punitha Sampathraj
4. Jeevamurugesan
5. B.D.Manoharan
6. K.Ramina

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 14.12.2007 made in E.P.No.57 of 2006 in O.S.No.226 of 2005 on the file of the District Munsif Court, Tambaram.

For Petitioners : Mr.Sriram

For Respondents

For R1-R4,R6 : No appearance

For R5 : Mr.Govarthan

for Mr.V.Srikanth

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 14.12.2007 passed by the learned District Munsif Tambaram in E.P.No.57 of 2006 in O.S.No.226 of 2005, thereby dismissing the execution proceedings filed by the petitioners.

2. The petitioners filed suit in O.S.No.226 of 2005 for recovery of possession in respect of B Schedule property and mandatory injunction to remove the construction put up in the C schedule property and permanent injunction restraining the first respondent to put up further construction in the suit property and from any way alienating or encumbering the suit property as against the respondents herein. The respondents were set exparte and the suit was decree in favour of the petitioners.

3. On the strength of the exparte decree, the petitioners filed execution petition in E.P.No.57 of 2006. While pending the execution proceeding, the objectors filed third party applications in E.A.Nos.56 & 57 of 2007 alleging that they owned the property to an extent of 357 sq.ft., out

of 12480 sq.ft., comprised in survey No.296/1A and 296/1B1 situated at Mudichur Road, West Tambaram, Chennai-45, by way of registered sale deed dated 16.02.2000 vide document No.888 of 2000. There are in continuous possession and enjoyment of the said property and the electricity connection also stands in their names. The Execution Court allowed the said petitions and aggrieved by the same, the petitioners also preferred civil miscellaneous appeal before this Court and it is pending.

4. After passing the order in E.A.Nos.56 & 57 of 2007, the petitioners did not appear before the Execution Court. Therefore, the Execution Court dismissed the execution petition in E.P.No.57 of 2006 on 14.12.2007 in view of the order passed in E.A.Nos.56 & 57 of 2007. Aggrieved by the said order, the petitioners filed this present civil revision petition.

5. The learned counsel appearing for the petitioners would submit that there are seven schedules mentioned in the suit property as Schedule A to G. The recovery of possession prayed insofar as the B Schedule property,

which is marked as ABCD in the rough sketch annexed along with the plaint. He further submitted that though the petitioners failed to mention the extent of the suit B Schedule property and it is admitted case of the objectors that they purchased only 357 sq.ft., out of 12480 sq.ft., comprised in survey Nos.296/1A and 296/1B1 as such, the Execution Court ought not to have dismissed the execution petition and the same is very much survive in respect of remaining portion of the B schedule property. Though the petitioners filed appeal as against the order passed in E.A.Nos.56 & 57 of 2007, the execution petition filed in pursuant to the decree passed insofar as all the prayers are concerned. Therefore he prayed to set aside the impugned order by allowing the present civil revision petition.

6. On perusal of plaint in O.S.No.226 of 2005, the petitioners prayed for following reliefs:-

"29. The plaintiffs therefore prays that this

Honourable Court may be pleased to

1. Directing the 1st defendant to vacate and handover the possession of the plaint B schedule property i.e., ABCD marked portion in the plaint plan;

2. Grant a mandatory injunction in favour of the plaintiffs directing the defendants to remove the construction put-up in the C schedule mentioned property ie., CDEF marked portion in the plaint plan and failing which the same may be done through Court;

3. Grant a permanent injunction in favour of the plaintiffs restraining the 1st defendant or his agents and men from in any way putting up further construction in the suit site;

4. Grant a permanent injunction in favour of the plaintiffs restraining the 1st defendant or his agents and men from in any way alienating or encumbering any portion of the suit site;

5. To award the cost of the suit and to pass such or other orders as may be deem fit in the circumstances of the above case."

7. These prayers were sought for in respect of the following schedule of property:-

"A- Schedule

The piece and parcel of vacant land situated at No.166, Tambaram Village, Saidapet Taluk, Chengai Anna District, bearing Survey Nos. 296/1A measuring North to South on the easter side 240 feet; North to South on the western side 240 feet; East to Wst on the southern side 42 feet, East to West on the northern side 42 feet and total extent of 10,080 sq.ft. Boundaries of the property

North by Kundru Poramboke

South by Mudichur Road

East by Ranganathan and Palani Property

West by Murugan Stores property.

B-Schedule

In the above A schedule the ABCD marked portion in the plaint plan (Plots 4 & 5)

C-Schedule

In the above A schedule the CDEF marked portion in the plaint plan (Plots 6 & 7)

D-Schedule

Purchased under Document No.5207 of 1998 by the 3rd defendant in pursuance of the sale deed dated 20.9.1998. In the above A schedule property 300 sq.ft., of undivided share.

E-Schedule

Purchased under Document No.5208 of 1998 by the 4th defendant in pursuance of the sale deed dated 22.7.1998. In the above A schedule property 300 sq.ft., of undivided share.

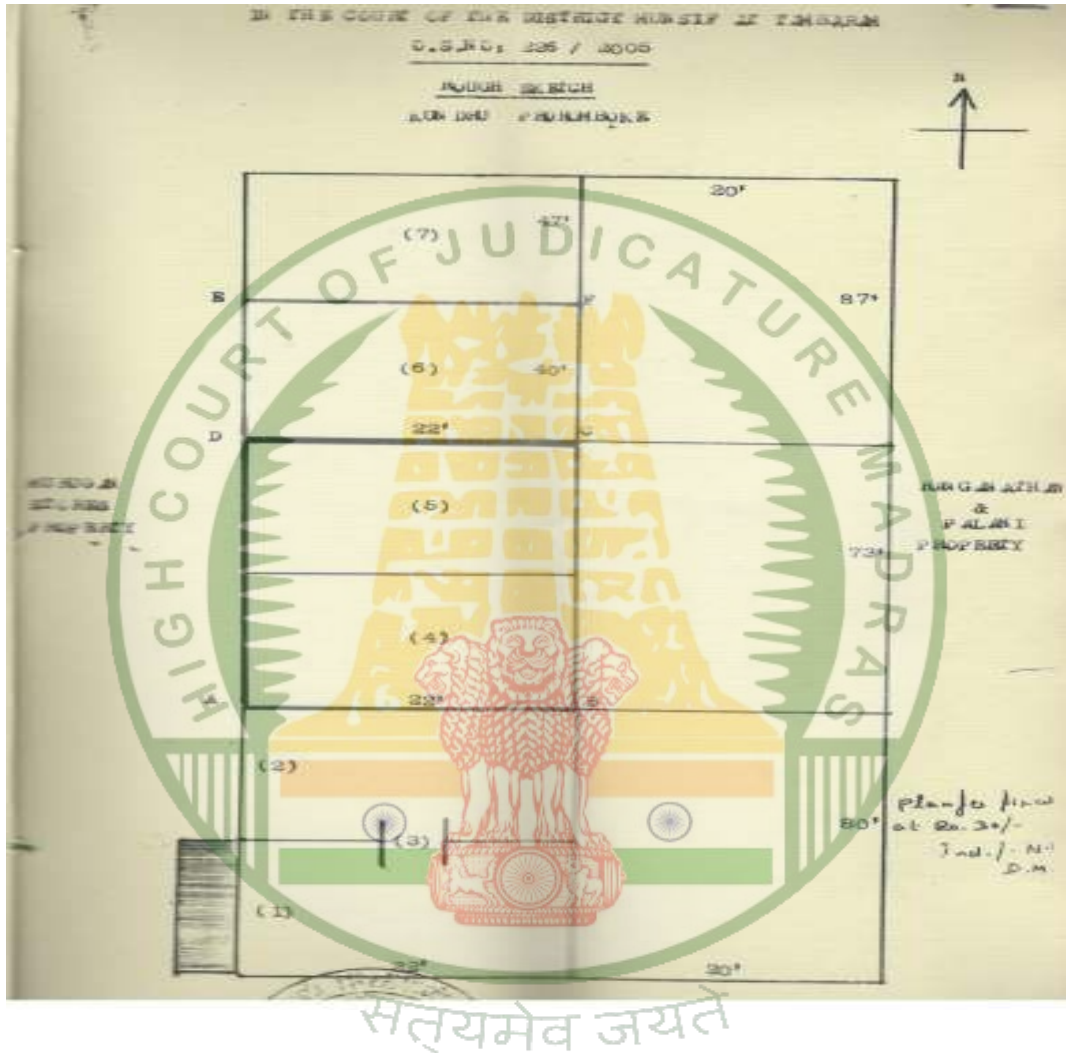
F-Schedule

Purchased under Document No.3928 of 1998 by the 5th defendant in pursuance of the sale deed dated 22.6.1998. In the above A schedule property 357 sq.ft. of undivided share.

G-Schedule

Purchased under Document No.1874 of 1998 by the 6th defendant in pursuance of the sale deed dated 33.3.1998. In the above A schedule property 357 sq.ft. of undivided share. "

8. The plan annexed with the plaint in O.S.No.266 of 2005 is shown as under :-



9. The first prayer sought for in respect of B schedule property. The B schedule property is marked as ABCD in the A schedule property. According to the objectors, they purchased the marked portion ABCD in the

B schedule property viz., plot Nos. 4 & 5. Admittedly, no prayer sought for in respect of A schedule property. Therefore, the entire B schedule property purchased by the objectors and they are in possession and enjoyment of the said property. Therefore, after allowing the petitions in E.A.No.56 & 57 of 2007, nothing survive in the execution petition and the trial Court rightly dismissed the execution petition and this Court finds no illegality or infirmity in the order passed by the Court below. However the petitioners are at liberty to file appropriate petition, after passing the order in Civil Miscellaneous Appeal filed as against the order passed in E.A.Nos. 56 & 57 of 2007 by this Court.

10. With the above observations, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

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02.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
rts

G.K.ILANTHIRAIYAN, J.

rts

To

1. The District Munsif Court,
Tambaram.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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and M.P.Nos.1 of 2008 & 1 of 2014

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