

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.320 of 2021
and
C.M.P.No.2794 of 2021**

1.P.M.Krishnamoorthy
2.Indiramohan

...Petitioners

Vs

1.Kannagi
Sarasmal (died)
R.Nallasamy (died)
2.N.Jayachandran
3.N.Sathishkumar
4.Sornammal
5.Saraswathi

...Respondents

Revision Petition filed under Section 115 of Code of Civil

Procedure to set aside the order dated 02.12.2020 made in E.A.No.8 of 2020
in E.A.No.7 of 2020 in E.P.No.20 of 2017 in O.S.No.646 of 1993 passed by
the learned 1st Additional Sub Judge of Erode.

For Petitioners : Mr.V.S.Kesavan

For Respondents : Mr.S.Kaithamalai Kumaran

ORDER

An original suit which was instituted about 28 years back has been meandering around and around and the plaintiff/decreed holder therein has still not technically attained the fruits of the decree. In fact, the very basis of the suit, namely, the schedule of the property is now being questioned by the 8th defendant in the said suit. The 8th defendant is the first revision petitioner herein.

2.The brief facts of the case are as follows:

O.S.No.646 of 1993 came to be filed in the Court of the I Additional Sub Court at Erode with respect to a property which had been described in the schedule of the suit. Relief sought was for specific performance of an agreement. It is stated that an alternate relief of partition and allotment of that particular share which fell under the agreement was also sought for.

3.The suit was decreed on 28.10.1997. First Appeals were filed and they were all clubbed together and finally all of them were dismissed on 30.04.2010. Thereafter, E.P.No.22 of 2011 was filed and the Execution petition was closed after due process on 07.09.2016. Delivery was directed on 06.01.2020 and physical possession was handed over on 09.01.2020. Now this has to be recorded by the Executing Court.

4.At that point of time, E.A.No.7 of 2020 came to be filed under Order 21 Rule 97 CPC r/w. Section 47 CPC. I am not able to understand that particular application. Order 21 Rule 97 CPC is an application seeking to remove obstruction. Section 47 CPC is an application calling upon the Executing Court to re-examine the issues and to examine whether all the issues have been answered. In that particular E.A.No.7 of 2020, E.A.No.8 of 2020 had been filed under Order 26 CPC seeking appointment of an Advocate Commissioner to fix the boundaries of the suit property and also of the property mentioned in the schedule of the Execution Petition.

5.Mr.V.S.Kesavan, learned counsel for the petitioners, stated that the present petitioners had not directly participated in the proceedings and orders have been obtained behind the back of the present petitioners. The learned counsel also stated that under the guise of taking possession, there is a possibility of the property of the petitioners also being taken possession and in order to avoid such a situation, appointment of an Advocate Commissioner is necessary. The learned counsel very fairly stated that the petitioners do not stand in the way of taking delivery of possession but only wanted to ensure that the property which is the subject matter in the suit and Execution Petition alone should be conveyed and no other property which according to the learned counsel is the apprehension of the revision petitioners herein.

6.On the other hand, Mr.Kaithaimalai Kumaran, learned counsel for the respondents vehemently protested stating that there has been no shift in the boundaries of the property. It has been stated that the schedule had been given in the plaint and the schedule had been given in the Execution

Petition and it is the same schedule for which Execution Petition had been filed and delivery is sought. Fundamentally, that is an aspect which has to be examined by the trial Court.

7.The application in E.A.No.8 of 2020 came to be dismissed by the learned I Additional Sub Judge, Erode by an order dated 02.12.2020. Questioning the said order, the present revision petition has been filed.

8.In the said order, the learned I Additional Sub Judge, Erode, after setting out the facts, stated that when a decree had been passed by accepting the boundaries, the first respondent in the said application/plaintiff is entitled to have the sale deed for the property described within the boundaries of the suit schedule and it was observed that the sale deed had also been executed for the same suit schedule property. It was also stated that with respect to the same property in the Execution Court that the proceedings for delivery of possession is pending and therefore, directed that measurement of the property cannot be ordered as the documents on the basis of which measurement was sought for, have already been held as

created documents by a Competent Court.

9.Faced with such a strong finding, it would be very difficult to override such a finding. It would only be appropriate that the learned Judge is permitted to proceed further by giving a decision in E.A.No.7 of 2020 on appreciation of the material records and on hearing the arguments advanced by the parties.

10.I am informed that E.A.No.7 of 2020 had progressed considerably and had been posted for passing of orders on 09.04.2021 and owing to the leave on medical grounds by the learned Judge, it has been now posted to 22.04.2021 for passing orders.

11.I would repose confidence on the learned Judge that a considered order would be passed in E.A.No.7 of 2020. After all, the revision petitioners herein can work out their remedies even subsequent to the passing of the said order. That option is always available. But interfering in the course of any proceedings at a time when the matter has been held over

for passing orders may not be appropriate.

12.Let the learned I Additional Sub Judge, Erode pass orders and the parties may thereafter, take up further proceedings regarding the order in proper perspective and as deemed fit and necessary in accordance with law and in accordance with the nature of the order that is passed. No further directions or orders are required in the present revision petition. The order under question is not interfered with. It is upheld.

13.Accordingly, the Civil Revision Petition is disposed of with a direction to the learned I Additional Sub Judge, Erode to proceed to pass orders in E.A.No.7 of 2020 which is now under consideration of the learned Judge. No order as to costs. Consequently, connected miscellaneous petition is closed.

14.I am confident that the learned I Additional Sub Judge, Erode would be passing orders in E.A.No.7 of 2020 without taking into consideration any of the observations if at all made in this present revision

petition, which observations are made only to determine the present Civil Revision Petition and certainly not with respect to any of the issues raised in E.A.No.7 of 2020. I am confident that the order shall be passed uninfluenced by any observations made by me in the course of this order.

20.04.2021

cse

Index: Yes/No

Internet: Yes/No

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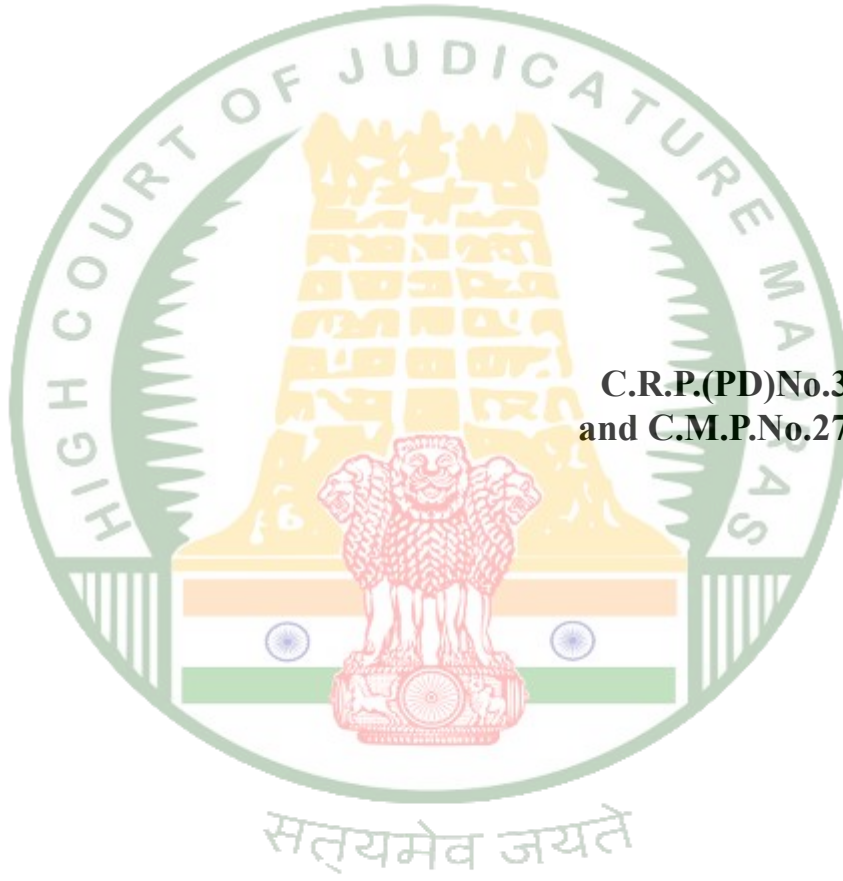
The I Additional Sub Judge,
Erode.



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C.V.KARTHIKEYAN, J,

cse



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