



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.NO.535 OF 2021

AND

C.M.P.NO.4600 OF 2021

R.Saravanan

...Petitioner

..Vs..

1. R.Shanthi
2. C.D.Jayalakshmi
3. R.Srinivasan
4. R.Karunakaran
5. R.Kalaivanai
6. V.Natarajan
7. K.Ramu
8. P.Nainiappan
9. Balu
- 10.P.Saravanan
- 11.Ramesh
- 12.Rajesekar
- 13.Shanmugam
- 14.B.C.Mani
- 15.Kumar
- 16.Vadivel
- 17.Francis
- 18.Jamal
- 19.Venkatesan

...Respondents

Prayer :-

Civil Revision Petition is filed under Article 115 of the Civil Procedure Code, to set aside the order dated 03.02.2021, in R.E.P.No.11 of 2019 in O.S.No.150 of 2010, passed by the learned Principal Sub Judge, Krishnagiri.

For Petitioner : Mr.G.Vasuthevan

For Respondents : For R1, R2 and R5-Mr.C.Jagadish
For R3 and R4-Mr.S.Gunasekaran
R6 to R19-Given up.



WEB COPY

ORDER

This Civil Revision Petition is filed to set aside the order dated 03.02.2021, in R.E.P.No.11 of 2019 in O.S.No.150 of 2010, passed by the learned Principal Sub Judge, Krishnagiri.

2.The suit in O.S.No.150 of 2010 was filed by the first respondent/plaintiff for partition. A preliminary decree was passed on 27.04.2006. The plaintiff/first respondent filed R.E.P.No.11 of 2019 for executing the final decree. On considering the rival submission, the learned Principal Subordinate Judge, Krishnagiri, passed an order dated 03.02.2021, to deliver the property specifically the property in survey No.79 in Krishnagiri town, to an extent of 409 square feet shown as "A" schedule property with land and buildings and an extent of 365 square feet land in survey No.7 shown as "F" schedule property to the plaintiff/first respondent. Against the said order, the present Civil Revision Petition is preferred.

3. The learned counsel for the petitioner submitted that during the pendency of final decree proceedings, there was a registered deed of partition dated 22.02.2013, executed between the parties and in accordance with the terms of the partition deed, certain amounts have to be receivable by the plaintiff/decree holder. The learned counsel for the petitioner submitted that the amounts have been paid, therefore, there is no necessity for executing the decree.

4. However, the learned counsel for the respondents 1, 2 and 5 submitted that though there was a registered partition deed dated 22.02.2013 was executed, there is yet another partition agreement entered between the parties on 15.03.2013, which is an unregistered agreement. In this agreement, the parties to the execution proceedings have agreed with regard to the payment of money to the tune of Rs.30,00,000/- to the plaintiff/first respondent and Rs.50,00,000/- to Jayalakshmi/2nd respondent and Rs.30,00,000/- to the fifth respondent. There is also one clause in the said agreement that if the amounts are not paid as indicated above on or before 10.12.2013, the plaintiff/first respondent is at liberty to seek remedy as per the final decree in O.S.No.10 of 2014. Since, the amounts have not paid as stated above, the 1st respondent has filed the present execution petition.

5. The learned counsel for the respondents 1, 2 and 5 submitted that the order passed on 03.02.2021 ordering delivery of possession is in accordance with law and therefore, he prayed for confirming the order dated 03.02.2021, in R.E.P.No.11 of 2019 in O.S.No.150 of 2010 passed by the learned Principal Sub Judge, Krishnagiri, by dismissing this Civil Revision Petition.



6. Considered the rival submissions and perused the records.

7. The registered partition deed dated 22.02.2013 was admitted by both the parties and the unregistered partition deed dated 15.03.2013 is not admitted by the petitioner. The registered partition deed was executed between the parties to the proceedings after passing of preliminary decree, in O.S.No.150 of 2010. Final decree was passed only on 16.03.2016, but the registered partition deed came into existence on 10.01.2013. Knowingly or unknowingly both the parties omitted to bring to the notice of the Executing Court about the existence of this registered partition deed dated 22.02.2013. If it had been brought to the notice of the learned Principal Sub Judge, Krishnagiri, the outcome of the order passed in the final decree petition would have been different. That apart, there is another unregistered partition deed dated 15.03.2013. The petitioner denies having been a party to this document. This is a disputed document. This document had also come into existence, even prior to passing of final decree on 16.03.2016. It appears that the existence of these documents had not been brought to the notice of the learned Principal Sub Judge, Krishnagiri. Therefore, this court is of the considered view that the genuineness of these two documents namely the registered partition deed dated 22.02.2013 and unregistered partition deed dated 15.03.2013, are to be proved and it is absolutely necessary for deciding the rights of the parties.

8. In this view of the matter, the order dated 03.02.2021, in R.E.P.No.11 of 2019 in O.S.No.150 of 2010, passed by the learned Principal Sub Judge, Krishnagiri, is set aside, and the matter is remanded back to the learned Principal Sub Judge, Krishnagiri, for fresh consideration in the light of registered partition deed dated 22.02.2013 and unregistered partition agreement dated 15.03.2013, subject to the admissibility of unregistered partition deed dated 15.03.2013. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ep/Jer



To

1. The Principal Sub Judge,
Krishnagiri.

2. The Section Officer,
VR Section,
High Court of Madras.

+lcc to Mr.S.Thirumavalavan, Advocate, S.R.No.46729

C.R.P.No.535 of 2021
and
C.M.P.No.4600 of 2021

RLD(CO)
CS/20/10/2021