

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

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

CRP.NPD.No.2941 of 2016

and

CMP.No.14939 of 2016

1.Kuppan

2.Ponnuswamy

..Petitioners

Vs.

Narayanan

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the order dated 24.06.2016 made in EP.No.13 of 2011 in OS.No.69 of 2006 on the file of the District Munsif cum Judicial Magistrate Court, Uthiramerur.

For Petitioners : Mr.Y.Jyothish Chander

For Respondent : Mr.V.K.R.Balakrishnan

WEB COPY
ORDER

This civil revision petition is filed against the order dated 24.06.2016 made in EP.No.13 of 2011 in OS.No.69 of 2006 on the file

of the District Munsif cum Judicial Magistrate Court, Uthiramerur thereby directed the respondent to execute decree passed in OS.No.69 of 2006 for specific performance.

2. The petitioners are defendants in the suit filed by the respondent for specific performance in respect of the suit schedule property in OS.No.69 of 2006. At the same time, the sister of the petitioners herein filed another suit in OS.No.97 of 2006 for partition including the suit schedule property in OS.No.69 of 2006. In fact, the respondent who is agreement holder is also one of the defendant in the partition suit. Both the suits were decreed and aggrieved by the same, the defendants in both the suits filed appeal suit in AS.Nos.50 of 2009 and 20 of 2010 and both the appeal suits were allowed and set aside the judgment and decree passed by the trial court. Aggrieved by the same, the respondent herein namely decree holder in the specific performance suit filed two second appeals before this Court in SA.Nos.1556 and 1557 of 2010. This court set aside the judgment and decree passed in appeal suit and restored the judgment and decree passed by the trial court in OS.No.69 of 2006 for specific performance. In respect of the decree of partition is concerned, in SA.No.1566 of 2010 this Court directed the

respondent and the plaintiff in the partition suit to work out their equity in the final decree proceedings in OS.No.97 of 2006 for partition on the file of the District Munsif, Uthiramerur by stepping into the shoes of the petitioners herein to the extent possible and accordingly the court below shall work out equity and deal with the matter.

3. While being so, the respondent without following the directions issued by this Court i.e. without filing petition for final decree in the partition suit in OS.No.97 of 2006, straightaway filed execution petition in EP.No.13 of 2011 for execution of the decree passed in the specific performance suit in OS.No.69 of 2006 in respect of the suit schedule property. It is curious note that 10th item of the suit property in the partition suit is the subject property in the suit for specific performance. Therefore, while allowing the second appeal, this Court specifically directed the respondent and the plaintiff in the partition suit to work out their equity in the final decree proceedings. Unfortunately the execution court allowed the petition for the reason that the proceedings has not attained finality in OS.No.97 of 2006 is not at all subject matter of the suit property in OS.No.69 of 2006.

4 It is for the petitioner to work out their remedy in OS.No.97 of 2006 as per the judgment passed in SA.No.1567 of 2010. As stated supra, the 10th item of the partition suit is the subject property of the specific performance suit. Therefore, it would be appropriate for the respondent to file petition for final decree and after allotment of the property to the petitioners herein, he can very well execute the decree of specific performance. Without allotting the property as per the partition decree, the decree of the specific performance cannot be executed.

5. In view of the above discussion, this civil revision petition is allowed and the order dated 24.06.2016 made in EP.No.13 of 2011 in OS.No.69 of 2006 on the file of the District Munsif cum Judicial Magistrate Court, Uthiramerur is set aside. It is made clear that this Court already directed the respondent as well as the plaintiff in the partition suit in OS.No.97 of 2006 to work out their equity in the final decree proceedings by stepping into the shoes of the petitioners herein to the extent possible and accordingly the court below shall work out the equity and deal with the matter. After filing final decree application, the court below is directed to follow the direction issued by this Court in SA.No.1567 of 2010. The court below is also directed to dispose of the

final decree application within a period of twelve weeks from the date of receipt of the application. Consequently, connected miscellaneous petition is closed. No order as to costs.

25.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

lok



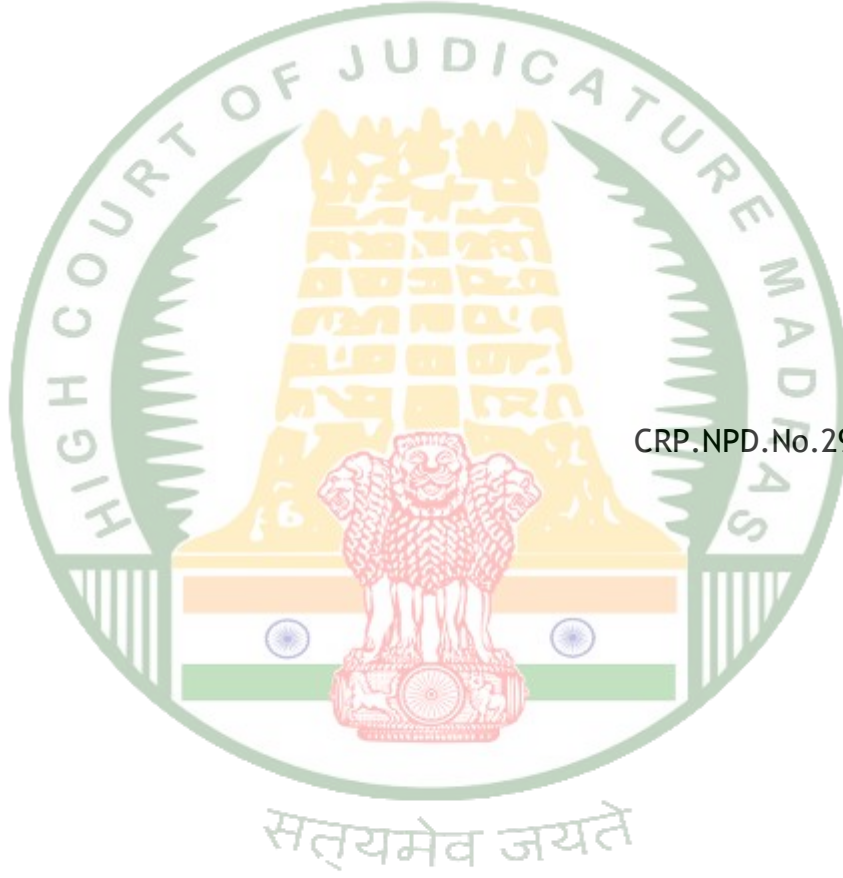
WEB COPY

G.K.ILANTHIRAIYAN,J.

lok

To

The learned District Munsif cum
Judicial Magistrate,
Uthiramerur.



CRP.NPD.No.2941 of 2016

WEB COPY

25.02.2021