



WEB COPY



C.R.P.(NPD).No.2644 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.2644 of 2021

and

C.M.P.No.19572 of 2021

Banu Safia

.. Petitioner

Vs.

A.Maria John

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order of the I Additional Subordinate Judge's Court at Erode, dated 27.01.2021 in E.A.No.126 of 2018 in E.A.No.93 of 2017 in E.P.No.4 of 2013 in O.S.No.417 of 1995.

For Petitioner : Mr.P.Valliappan
for M/s.PV Law Associates



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ORDER

WEB COPY This Revision is against the order dismissing the application filed by the petitioner seeking appointment of Commissioner to note down the physical features existing around the property and submit a detailed report along with a plan.

2. This application has been filed in execution proceedings, where the respondent/ decree holder sought to execute a decree for specific performance granted to her in O.S.No.417 of 1995. The said suit came to be decreed on 10.04.2007. The decree has become final and an Execution Petition in E.P.No.4 of 2013 has been filed by the decree holder seeking execution of the decree. Delivery was ordered. The Court amin, who went to effect delivery, returned the warrant, stating that the delivery could not be effected, for want of assistance by Surveyor, as he could not identify the property. Therefore, the decree holder filed E.A.No.92 of 2017 for appointment of Surveyor and the same is pending.



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3. In the interregnum, claiming that a compromise agreement has been entered into on 23.04.2016, the petitioner had filed an application in E.A.No.93 of 2017, seeking to pass an order to record the compromise and the same is pending. It is in that application, the petitioner has filed the instant application in E.A.No.126 of 2018, seeking appointment of Commissioner with a strange prayer for noting down the physical features of the property existing in and around the suit property.

4. The learned I Additional Subordinate Judge, Erode, who heard the application, dismissed it, concluding that when the application for appointment of Surveyor by the decree holder is pending, this application for appointment of Commissioner is wholly unnecessary. He had also pointed out the pendency of E.A.No.93 of 2017 filed by the judgment debtor seeking to record compromise

5. Mr.P.Valliapan, learned counsel appearing for the petitioner would vehemently contend that there is a dispute regarding identity of the property. The decree being one for specific performance, it is all the more required



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that the identity of the property is clearly fixed, before the Court proceeds further. According to the counsel the Commissioner's report would be a great help to fix the identity of the property.

6. No doubt, the submission of the counsel appears to be very attractive. On the facts and circumstances of the case, I do not think the application by the judgment debtor seeking appointment of Commissioner in the execution proceedings could be said to be *bona fide*. As already pointed out the ameen has returned the warrant on the ground that he needs assistance of the Surveyor. The decree holder has filed application seeking appointment of Surveyor and the same is pending. The report of the Surveyor will remove the difficulty in identification of the property. Therefore, the present application, to my mind, is wholly unnecessary.

7. The learned Subordinate Judge also taken the same view. I do not see any reason to interfere with the conclusion of the learned Subordinate Judge. Therefore, the Revision fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.



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WEB COPY 8. The Executing Court is directed to take up E.A.Nos.92 and 93 of 2017 which are pending before it and dispose them of within a period of three (3) months from the date of receipt of a web copy or a certified copy of the order and report such disposal to this Court.

13.12.2021

dsa

Internet :Yes

Index : No

Speaking order

To

The Subordinate Judge, Erode.



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R.SUBRAMANIAN, J.

dsa

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