

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

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

**C.R.P.(NPD) No.843 of 2018
and CMP No.4665 of 2018**

R.Mohan

... Petitioner

Vs.

1.Sathya Narayanan

2.Srini

3.Murali

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order and decretal order dated 17.07.2017 made in I.A.No.4 of 2013 in O.S.No.126 of 2002 on the file of the Additional Sub Court, Vaniyambadi.

For Petitioner : M/s.K.M.Vijayan Associates

For Respondents : Mr.V.Lakshminarayanan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 17.07.2017 made in I.A.No.4 of 2013 in O.S.No.126 of 2002 on the file of the Additional Sub Court, Vaniyambadi, thereby dismissing the Execution Petition.

2. The petitioner is the plaintiff and the respondents are the defendants in the suit. The petitioner filed a suit for bare injunction in respect of the suit property. According to the petitioner, his father and father of the respondents have jointly purchased the suit property to the extent of 3528 sq.ft, in which the petitioner's father entitled to ½ share. In the ½ share, the petitioner and his brother partitioned the suit property. Therefore, the respondents have no right or interest in the suit property. However, the respondents attempted to trespass into the suit property and tried to demolish the wall. Therefore, the petitioner filed a suit for bare injunction in respect of the suit property and the same was decreed by a judgment and decree dated 26.04.2012, in which, it was concluded that the property ad-measuring 1764 sq.ft. comprised in Survey No.379/1B, the front portion of the suit property was purchased by the father of the petitioner and the same was categorically admitted by the respondents herein.

3. In pursuant to the said decree, the petitioner filed an Execution Petition for arrest of the respondents for violating the judgment and decree passed in favour of the petitioner herein. In the execution petition, the

petitioner examined PW.1 and P.W.2 and marked Ex.A1. The said respondent examined as DW.1 and documents were marked as Exs.R1 to R22. Pending Execution Petition, an Advocate Commissioner was appointed and he also filed his report and the same was marked as Ex.R8. In fact, pending suit, the Advocate Commissioner was appointed and as per his report, in the front portion of the suit property, the first respondent is running a clinic and also a shop was rented out by him to the Sathya Cloth Centre. Therefore, admittedly the first respondent is in possession and enjoyment of the part of the suit property. The report also revealed that the first respondent is running a clinic in a portion of the suit property and also he rented out a small portion for Sathya Cloth Centre.

4. Admittedly, the property ad-measuring 3528 sq.ft was purchased by the petitioner's father as well as the father of the respondents. Thereafter, no partition was done between them. According to the petitioner, the front portion of the entire suit property ad-measuring 1764 sq.ft was allotted to the petitioner's father and in which the first respondent occupied a small portion in the front side and he is running a clinic.

G.K.ILANTHIRAIYAN,J,

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Therefore, the Execution Court rightly dismissed the petition. Accordingly, this Court finds no illegality or infirmity in the order passed by the Court below. The Civil Revision Petition is dismissed. However, the petitioner is at liberty to file a suit for partition and proper relief in the manner known to law, if so advised.

09.04.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

The Additional Sub Court,
Vaniyambadi.

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**C.R.P.(NPD) No. 843 of 2018
and CMP No.4665 of 2018**