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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.1921 of 2021

and

C.M.P.No.14908 of 2021

Kulasekaran

...Petitioner

Vs

Radhakrishnan

...Respondent

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the Fair order dated 05.04.2021 passed in E.A.No.117 of 2020 in E.P.No.77 of 2014 in O.S.No.208 of 2003 on the file of the Subordinate Judge, Panruti and allow the Civil Revision Petition.

For Petitioner : Mr.V.Rajesh Babu.

For Respondent : Mrs.Hema Sampath,
Senior Counsel
for Mr.D.Vijay Krishna.

O R D E R

This Civil Revision Petition has been filed to set aside the order passed on 05.04.2021 in E.A.No.117 of 2020 in E.P.No.77 of 2014 in O.S.No.208 of 2003 on the file of the Subordinate Judge, Panruti.

2.It is seen from the records that E.A.No.117 of 2020 was filed under Section 151 of the Civil Procedure Code seeking permission of the Court to summon the Village Administrative Officer, Marungur and examine him. The reason for the said Application, according to the Learned Counsel for the Petitioner, is that the property shown in the Execution Petition is not his property and the Suit was filed fabricating the documents and a decree has been obtained.

3. The specific case of the Petitioner is that the property comprised in S.No.558/1 (Old Survey Number 787/1) does not belong to him and it belongs to some one else. His property is



in S.No.559/1 (Old Survey Number 743/1) and these aspects have to be proved by summoning the Village Administrative Officer of Marungur. However, this Petition was resisted by the Respondent before the trial Court. The trial Judge, after hearing the submissions made by both the parties and on perusing the records, dismissed the Petition. Against the said dismissal order, this Petition has been filed.

4.The Learned Counsel for the Petitioner reiterating the submission made in the affidavit filed in E.A.No.117 of 2020, submitted that the property shown in the Execution Petition is not the property of the Petitioner and the S.No.558/1 (Old Survey Number 787/1) given in the Execution Petition is not correct and that property belongs to some one else. His property is in S.No.559/1 (Old Survey Number 743/1). Therefore, he would be in a position to elicit this discrepancy if the Village Administrative Officer is summoned and examined. However without considering the merits of his submissions, the Learned trial Judge dismissed the Petition. Hence, he prayed for setting aside the order and allowing the Petition.

5.In response to the said contentions, the Learned Counsel for the Respondent submitted that Suit was filed for specific performance in the year 2003 and on contest, the Suit was decreed on 07.03.2006. The Petitioner filed an Appeal in A.S.No.54 of 2006 before the District Court, Cuddalore and the same was dismissed on 21.04.2007. Then the Respondent filed E.P.No.48 of 2007 for execution of sale deed. The Petitioner through his daughters and son filed Petition under Section 47 of Civil Procedure Code in E.A.No.114 of 2008 and transfer Petition in Tr.O.P.No.156 of 2008 was filed for transferring the E.A.No.114 of 2008 and that ended up in dismissal.

6.Further, C.R.P.No.2249 of 2009 was filed by the Petitioner against the dismissal of transfer Petition and that was also dismissed. E.A.No.114 of 2008 filed under Section 47 of Civil Procedure Code was dismissed on 26.11.2013. Ultimately, the sale deed was executed in favour of the Respondent on 03.03.2014. When the Respondent filed Petition for delivery of the Suit property in E.P.No.77 of 2014 and the same is pending, the Petitioner has raised this new plea stating that S.No.558/1 (Old Survey Number 787/1) is not correct and the property does not belong to him. The Court over ruled his objection and delivery was ordered on 14.03.2017 and the property was delivered to the Respondent on 22.03.2017. Thereafter, E.A.No.93 of 2017 was filed seeking six months time for filing an Appeal and that was also dismissed on 14.10.2020 as infructuous. Then the present Petition has been filed.



7.The Learned Counsel for the Respondent further submitted that the list of dates and events clearly shows that the Petitioner's intention is to drag on the proceedings and to deny the fruits of the decree.

8.Considered the rival submissions made by the parties and perused the records placed before this Court.

9.The dispute now raised by the Petitioner is that S.No.558/1 (Old Survey Number 787/1) mentioned in the Suit in respect of the Suit property and in the Execution Petition is wrong and he is the owner of the property in S.No.559/1 (Old Survey Number 743/1). When this Court has posed a question as to whether Petitioner has taken this defence that S.No.558/1 (Old Survey Number 787/1) is not correct and the property belongs to him is in S.No.559/1 (Old Survey Number 743/1) in the written statement filed before the trial Court, the learned Counsel for the Petitioner answered in negative.

10.It is seen that the Suit was filed seeking relief of specific performance. It is seen from the description given in the decree that the Suit property is described with its location and survey number as S.No.558/1 (Old Survey Number 787/1). The description of the property is an important aspect in any Suit involving immovable property. When there is a dispute with regard to description of the property especially when the Petitioner claims that the survey numbers are different and he is not the owner of the property, he is certainly expected to inform this aspect to the Court by way of filing his written statement. When that is not done at the earlier point of time, it is not open to the Petitioner now to contend that the survey number is not correct, he is not the owner of the Suit property.

11.As indicated above, this case travelled for long distance from 2003. Already a Petition under Section 47 of Civil Procedure Code was filed and Petition to transfer was filed and both were dismissed and again a Petition in E.A.No.93 of 2017 was filed seeking six months time and that was also dismissed. Filing of all these applications clearly shows that the present Petition was also filed without any substance and merits and only with a view to drag on the proceedings.

12.The order of the Learned subordinate Judge, Panruti was passed after considering all the relevant aspects. Hence, this Court does not want to interfere with the said order.



13.Resultantly, this Civil Revision Petition is dismissed with the costs of the Respondent. Consequently, connected Miscellaneous Petition is closed.

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MEMORANDUM OF COSTS

Respondent's() Costs

	Rs. p
Stamp for Vakalatnam	10.00
Advocate's fee [FC not filed]	
Translation and Printing/Typing charges	Nil
To be paid by the Petitioner	10.00
to the Respondent	

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

ay

To

The Subordinate Judge,
Panruti.

+1cc to Mr.V.Rajesh Babu, Advocate, S.R.No.48328
+1cc to Mr.D.Vijay Krishna, Advocate, S.R.No.48183

C.R.P.No.1921 of 2021
and
C.M.P.No.14908 of 2021

RSV[co]
NSK 15/11/2021