

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17.09.2021

Coram::

THE HONOURABLE Mr.JUSTICE G.CHANDRASEKHARAN

C.R.P(NPD).No.1991 of 2021

Hiyath Khan
S/o.Ajeeskhan,

... Petitioner

/versus/

1. Smt.Rumar Begam,
W/o.Late Niyamathullah Sherif
2. Ammu Vubera,
W/o.Late Niyamathullah Sherif
3. Minor Amir Taj,
S/o.Late Niyamathullah Sherif,
4. Minor Shabigullah Sherif,
S/o.Late Niyamathullah Sherif,
5. Minor Sherif,
S/o.Late Niyamathullah Sherif,
(Respondents 3 and 5 are minors
represented their guardian next friend and
Mother viz., 1st respondent)

All are residing at
Thenkarai Kottai Village & Post,
Pappirettipatti Taluk,
Dharmapuri District.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to direct the Learned Sub-Judge, Harur, to speedy dispose petition

in R.E.A.No.75 of 2019 in R.E.P.No.43 of 2012 in O.S.No.73 of 2005 on the file of the Sub-Judge, Harur.

For Petitioner : Mr.K.Balaji

ORDER

This Petition is filed seeking direction to the Learned Sub-Judge, Harur, for speedy disposal of R.E.A.No.75 of 2019 in R.E.P.No.43 of 2012 in O.S.No.73 of 2005.

2. The Learned Counsel for the petitioner submitted that, in a suit for specific performance, the decree was passed on 30.01.2006. The petitioner filed execution petition in the year 2012. It is further submitted that the judgment debtors/respondent filed an application to set aside the *exparte* decree and filed an application in R.E.A.No.75 of 2019 under Section 47 of C.P.C. Both the petitions were dismissed.

3. Against the said order of dismissal, the Civil Revision Petitions Nos.4315, 4316 & 4317 of 2018 was filed by the respondents. These Civil Revision Petitions had been disposed of, on 11.07.2019, with the following observations:-

“7. From the consideration of all these facts, it is clear that the petitioners are entitled to one acre of the total extent of four acres land as their share and the respondents are entitled to 2.65 acres of land having purchased the same through a decree passed in a specific performance suit. It only remains to identify the respective shares of both the parties . At this stage, the petition to set aside the ex parte decree as well as the petition under section 47 CPC in an execution petition are not maintainable. Since the matter is clarified, it is open to the parties to work out the remedies before the execution Court to appropriate their respective shares, to which they are legally entitled.”

4. In pursuance of this observation, the petitioner filed R.E.A.No.75 of 2019, for appointment of Advocate Commissioner along with the Surveyor to identify the property. This application is pending without any progress. The respondents are filing unnecessary applications to protract the proceedings and therefore, this petition is filed.

5. Considered the submissions made by the Learned Counsel for the petitioner and perused the records.

6. It is seen from the records, the decree was passed on 30.01.2006 and execution petition is pending from the year 2012. In C.R.P.(PD).No.4315, 4316, 4317 of 2018, the aforesaid direction has been given. In pursuance of this direction, petitioner filed R.E.A.No.75 of 2019 for appointment of Advocate Commissioner along with Surveyor to identify the property.

7. Considering the fact that, the decree was passed in the year 2006 and the petitioner is not able to get the fruits of the decree, the Learned Sub Judge, Harur, is directed to dispose of R.E.A.No.75 of 2019, as expeditiously as possible, preferably within a period of 6 months, from the date of receipt of copy of this order.

8. Accordingly, the ***Civil Revision Petition is disposed of.*** No costs.

17.09.2021

Index :Yes/No
Speaking order/Non-speaking order.

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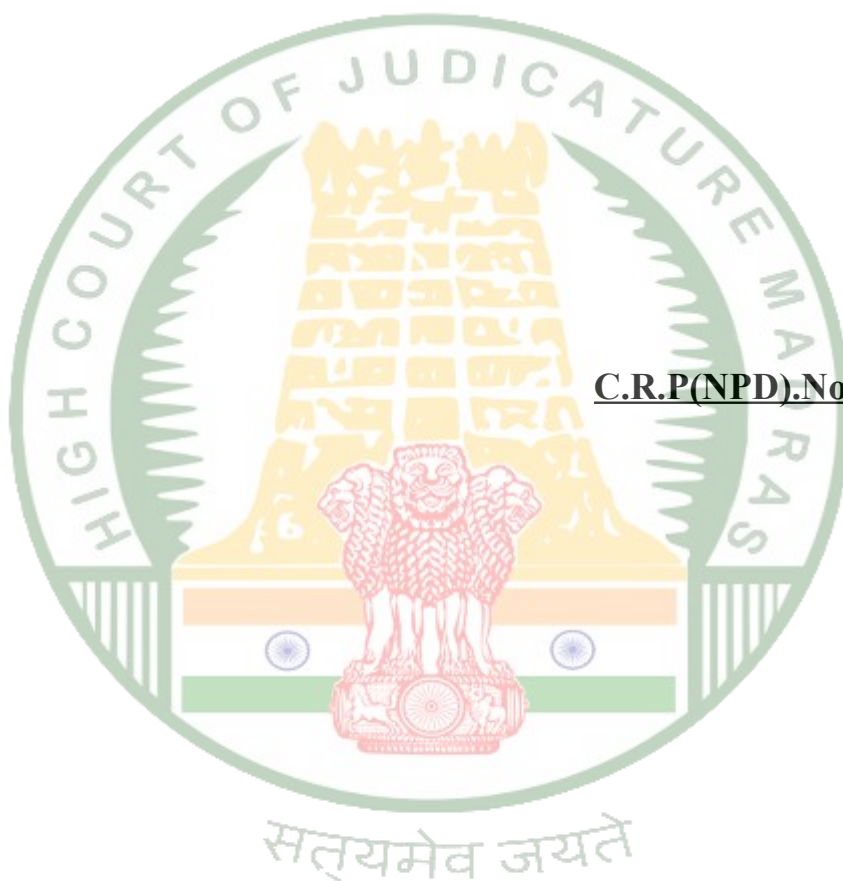
To:-

1. The Learned Sub-Judge, Harur.

2. The Section Officer, V.R.Section, High Court, Madras.

G.CHANDRASEKHARAN,J.

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