

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.2186 of 2021
and C.M.P. No.16592 of 2021

S.Jeevan

Petitioner /
8th Defendant

1.J.Gunalam
2.J.Ravichandran
3.J.Sathyaseelan

Respondents /
Plaintiffs

4.M.Philip @ Kannusamy
5.M.Prabu
6.M.Jesudass
7.M.John Samuvel
8.M.Saraswathi @ Saroja
9.Janaki @ Johnsibai

Chinnammal (Died)

10.The Thasildar,
Taluk Office,
Erode - 1.

11.The District Collector,
Erode District,
Erode.

Respondents /
Defendants 1 to 7,
9 & 10

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, to set aside the fair and final order passed in E.P.R.No.56 of 2017 in O.S.No.786 of 2005 before the learned I Additional District Munsif, Erode, dated 14.08.2021.

For Petitioner : Mr.B.Gopalakrishnan

ORDER

This Civil Revision Petition is filed, challenging the order dated 14.08.2021 passed by the learned I Additional District Munsif, Erode, in E.P.R.No.56 of 2017 in O.S.No.786 of 2005.

2. The learned counsel for the petitioner submitted that, the respondents have filed the suit for declaration of title in respect of the suit property; declaration that the impugned HSD Thoraya Patta No.572 obtained by the father of the defendants 1 to 6, namely, Manuel pertaining to an extent of 894 sq.ft. on the western portion, within the suit property without the knowledge and consent of the plaintiffs as sham, nominal, fraudulent, null and void and does not bind the plaintiffs; declaration that the impugned Sale Deed dated 06.11.1995 alleged to have been executed by the defendants 1 to 6 along with their father,

Manuel, in favour of the 8th defendant, as sham and nominal and does not bind the plaintiffs and deliver possession of the property covered under the Sale Deed dated 06.11.1995.

3. This suit, after contest, was dismissed on 18.06.2010. The respondents 1 to 3 filed an appeal in A.S.No.75 of 2010 and that appeal was allowed, by setting aside the judgment of the trial Court and decreed the suit with the direction to the defendants to remove the encroachments in the suit property and handover the possession, within a period of three months. Against this judgment, the Judgment Debtors filed S.A.No.539 of 2011 and Second Appeal came to be dismissed on 02.01.2017.

4. The learned counsel for the petitioner submitted that, the Review Application is filed against the judgment made in Second Appeal and it is yet to be numbered. Meanwhile, the Decree Holders are trying to execute the decree. The learned I Additional District Munsif, has also ordered delivery of the property. Therefore, this petition. It is further submitted by the learned counsel for the petitioner that, there is a dispute in identification of the property because there

is change in Survey Number in the description of the property and the patta given in favour of the petitioner. Therefore, he prayed for setting aside the order passed in E.P.

5. Considered the submissions and perused the records.

6. If really, there is change or discrepancy in the Survey Number in the patta given to the petitioner and in the schedule of the property, this issue ought to have been raised before the trial Court. It appears that this issue was not raised before the trial Court. This Court, on perusal found that, the description of property given in decree in A.S.No.75 of 2010 and the description of property given in E.P.R.No.56 of 2017 are one and the same. There is no difference or discrepancy in the description property. The properties are identified with 4 boundaries, with specific extent. Therefore, the contention of the learned counsel for the petitioner that, there is discrepancy in describing the property and difficulties in identifying the property, cannot be accepted.

7. The suit was filed in 2005. This First Appellate Court decided the case on 23.12.2010. Second Appeal was disposed on 02.01.2017. There is no S.L.P. was filed. Though it is alleged that Review Application was filed for reviewing the judgment in S.A.No.539 of 2011, it is seen that the review application is not numbered. Therefore, there is no reason to further withhold the proceedings in the Execution Petition. The Executing Court has gone through the records and passed the order of delivery. Therefore, this Court finds no reason to differ with the order of the learned I Additional District Munsif, Erode and the order dated 14.08.2021 made in E.P.R.No.56 of 2017 in O.S.No.786 of 2005, is hereby confirmed.

8. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

05.10.2021

Speaking order / Non-speaking order
Index : Yes / No
psa / sri

G.CHANDRASEKHARAN, J.

psa / sri

To

- 1.The 1st Additional District Munsif,
Erode.
- 2.The Thasildar,
Taluk Office,
Erode - 1.
- 3.The District Collector,
Erode District, Erode.



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