



WEB COPY



C.R.P.(NPD).No.2410 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.2410 of 2021

and

C.M.P.No.18336 of 2021

Ayyasamy Gounder (Died)

1.Vijayalakshmi

2.K.Santhamani

3.A.Rathinabaggiam

.. Petitioners

Vs.

S.K.Sivasamy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to strike of the E.P. Proceedings in E.P.No.65 of 2015 in O.S.No.110 of 2001 pending before the II Additional Sub-Court, Coimbatore.

For Petitioner : Mr.B.Ramamoorthy



C.R.P.(NPD).No.2410 of 2021

ORDER

This Revision under Article 227 of the Constitution of India seeks striking off of the execution proceedings in E.P.No.65 of 2021 in O.S.No.110 of 2004 pending before the II Additional Sub-Court, Coimbatore.

2. The suit was filed seeking specific performance of the agreement of sale dated 07.12.1994. The suit came to be decreed after contest. Admittedly, the decree has become final. When the decree holder sought to execute the decree, his troubles started. A person claiming to be another agreement holder filed an application under Order XXI Rule 97 of the Code of Civil Procedure and the same was dismissed.

3. The present petitioners who are the daughters of the original owner/ defendant in the suit Ayyasamy Gounder had created an unregistered lease deed in the name of one Sivabalan during the year 2017 i.e, during the pendency of the Execution proceedings itself, in and by which, they had sought to lease out an extent of 1.67 acres in S.No.36/1B and 2.03 ½ acres in S.No.37/8. When delivery was ordered in the execution proceedings and

2/6



C.R.P.(NPD).No.2410 of 2021

when the delivery was to be taken, the plaintiff/ decree holder was obstructed from taking possession of an extent of 2 acres 3 ½ cents situate in S.No.37/8. Regarding 1 acre 67 cents in S.No.36/1B, possession was delivered to the plaintiff/ decree holder.

4. The amins report states that the 2 acres 3 ½ cents in S.No.37/8 is in possession of a person who is not a party to the suit, therefore delivery could not be effected. It appears that the plaintiff/ decree holder had entered in some sort of settlement with the obstructor with which we are not concerned for the present.

5. Mr.B.Ramamoorthy, learned counsel appearing for the petitioners would however vehemently contend that the very decree is bad, since the plaintiff has now conceded that the defendant in the suit viz., Ayyasamy Gounder is not the owner of the entire extent of the suit property.

6. I do not find any such assertion having been made by the plaintiff.



C.R.P.(NPD).No.2410 of 2021

The amins report shows that he could not effect delivery of 2 acres 3 ½ cents since it is in possession of the third party. It is open to the plaintiff to seek delivery by seeking removal of obstruction under Order XXI Rule 97 of the Code of Civil Procedure or to take any other appropriate proceedings. It is also be open to the plaintiff to enter into any kind of settlement with the obstructor.

7. It is also contended that the tenant had been put in possession pursuant to the lease deed dated 23.09.2017 pending execution proceedings. It is a common knowledge that an application under Order 21 Rule 97 of the Code of Civil Procedure, will have to be decided as a suit, wherein, right, title and interest of the claimant has to be gone into by the Court. Rejection or striking out of the execution proceedings at this stage will have bearing on the pending applications also.

8. Moreover, the petitioners herein have dragged on the execution proceedings for nearly 6 years now. The decree is of the year 2002, it is almost for 19 years the decree holder is prevented from enjoying the fruits



C.R.P.(NPD).No.2410 of 2021

of the decree. In the above circumstances, I do not think that the execution proceedings could be rejected solely on the ground that the decree holder has entered into a settlement with the person in possession of 2 acres 3 ½ cents.

9. Hence, the Revision fails and it is accordingly dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

08.11.2021

dsa

Index : No

Internet : Yes

Speaking order

To

The Additional District Munsif,
Kancheepuram.



WEB COPY



C.R.P.(NPD).No.2410 of 2021

R.SUBRAMANIAN, J.

dsa

C.R.P.(NPD).No.2410 of 2021

08.11.2021