

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

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

CRP.NPD.No.1640 of 2017

Kasthuri

..Petitioner

Vs.

1.Sampath

2.Ranjith

3.Nandhini

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against fair and decretal order dated 28.02.2017 made in EP.No.7 of 2015 in OS.No.259 of 2004 on the file of the District Munsif Court, Dharapuram

For Petitioner : Mr.N.Manokaran

For Respondents

For R1 : Mr.N.Ponraj

R2 & 3 : Notice served

ORDER

This civil revision petition is directed as against the fair and decretal order dated 28.02.2017 made in EP.No.7 of 2015 in

OS.No.259 of 2004 on the file of the District Munsif Court, Dharapuram thereby dismissing the EP for delivery of possession.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed suit for specific performance as against the respondents and the same was decreed by the judgment and decree dated 10.01.2005. On the strength of the decree, he filed petition in EP.No.35 of 2015. In the execution petition, sale deed was also executed in favour of the petitioner in respect of 1/3 undivided share of the suit property in favour of the petitioner herein by the sale deed dated 20.04.2015. In pursuant to the sale deed, the petitioner also filed another execution petition in EP.No.7 of 2015 for delivery of possession in respect of the 1/3 undivided share of the suit property and the same was dismissed. Aggrieved by the same, the present civil revision petition is filed.

3. The learned counsel for the petitioner would submit that admittedly, sale deed has been executed in favour of the petitioner in respect of 1/3 undivided share in respect of the suit property pursuant to the decree passed in OS.No.259 of 2004. Therefore, the petitioner is

entitled for possession of the suit property. Since it is undivided share in the suit property, atleast he is entitled for symbolic possession of 1/3 undivided share of the suit property.

4. Per contra, the learned counsel for the first respondent would contend that the execution court neither ordered for symbolic possession nor actual possession in respect of undivided share is concerned. Further he stated that in respect of the very same relief, already the petitioner filed execution petition in EP.35 of 2015 for delivery of possession and the same was dismissed. In fact, there is another purchaser in respect of undivided share in the suit property and he was not added as party in the execution petition. Therefore, the execution petition is also bad for non joinder of necessary party.

5. Heard Mr.N.Manokaran, the learned counsel for the petitioner and Mr.N.Ponraj, the learned counsel for the first respondent.

6. The petitioner filed suit for specific performance and the same was decreed. In pursuant to the decree, the petitioner filed petition in EP.No.35 of 2005 seeking for execution of the sale deed and

possession. After execution of the sale deed in favour of the petitioner in respect of 1/3 undivided share in the suit property by the sale deed dated 20.04.2015 in favour of the petitioner, in respect of delivery of possession was not ordered and EP was terminated on 24.04.2015. Thereafter, the petitioner come forward with the petition for delivery of possession in pursuant to the sale deed dated 20.04.2015 executed in his favour. The first respondent filed suit for partition in OS.No.113 of 2015 on the file of the Additional District Court, Dharapuram claiming 1/6 share in the suit property. He also filed another suit in OS.No.227 of 2015 challenging the sale deed executed in favour of the petitioner dated 20.04.2015 and the same is also pending. Admittedly, it is a joint family property. One of the parties' undivided share has been purchased by the petitioner herein. Therefore, the possession of the undivided share could not be ordered unless the property is partitioned by metes and bounds. In fact the first respondent herein already filed suit for partition in OS.No.23 of 2017, in which the petitioner is also one of the party. Therefore, the court below rightly dismissed the execution petition filed for delivery of possession and this Court finds no infirmity or illegality in the order passed by the court below.

7. Accordingly, this civil revision petition is dismissed. However, the petitioner is at liberty to work out his remedy in the partition suit filed by the first respondent herein in the manner known to law. No order as to costs.

25.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok



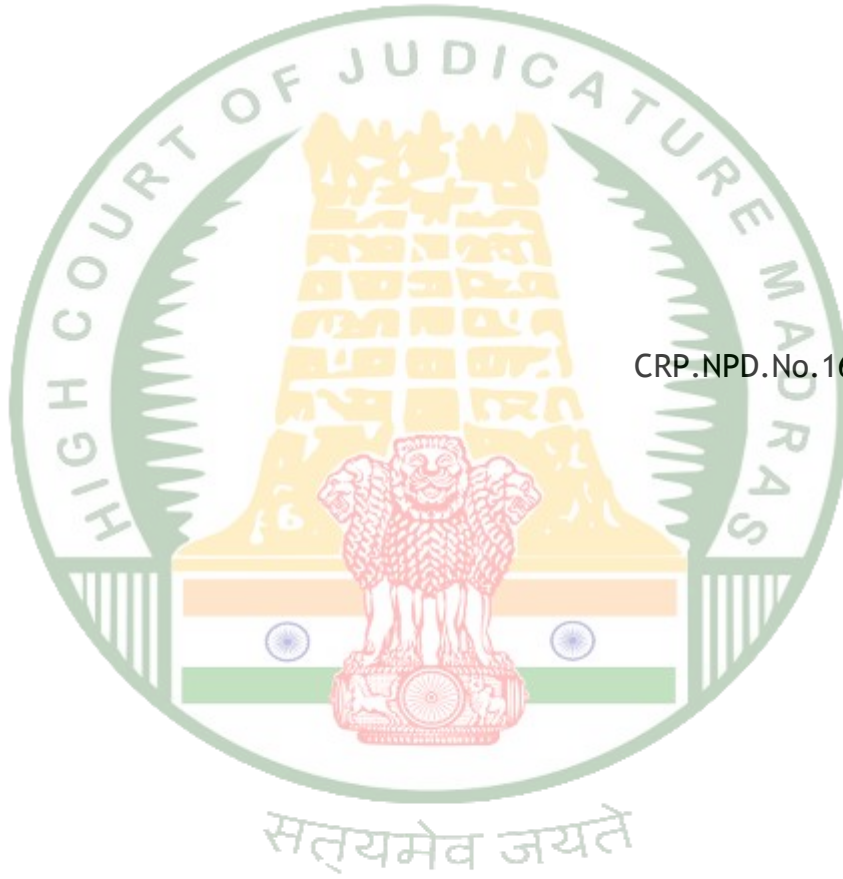
WEB COPY

G.K.ILANTHIRAIYAN,J.

lok

To

The District Munsif Court,
Dharapuram



CRP.NPD.No.1640 of 2017

WEB COPY

25.03.2021