

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3370 of 2017
and C.M.P.No.15689 of 2017

P.Narayanasamy (Died)

1.Krishnammal

2.Raja

3.Anbaraasu

4.Mahesh

.. Petitioners

Vs.

M/s.Ramani Investments,
Rep. By its Managing Partner,
S.Jegadeesan,
Door No.3/340,
Rajaji Road,
Salem 636 007.

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 23.09.2016, allowing application in E.P.No.50 of 2013 in O.S.No.75 of 2003, on the file of the III Additional District Court, Salem.

For Petitioners : Mr.P.Jagadeesan

For Respondent : Mr.S.Parthasarathy (Senior Counsel)
for M/s.P.Sivakumar

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal order dated 23.09.2016, allowing application in E.P.No.50 of 2013 in O.S.No.75 of 2003, on the file of the III Additional District Court, Salem.

2.The petitioners are legal heirs of the deceased P.Narayanasamy, who is the defendant in O.S.No.75 of 2003, on the file of the III Additional District Court, Salem. The respondent filed the said suit for specific performance, permanent injunction or in the alternate, repay the amount together with interest. The deceased P.Narayanasamy/defendant filed written statement on 17.04.2000. Subsequently, he did not contest the suit and did not appear. An exparte decree was passed on 12.01.2004. After decree, the defendant died on 22.10.2004, leaving behind the

petitioners as his legal heirs. The respondent filed E.P.No.50 of 2013, to execute the decree dated 12.01.2004, against the petitioners, in July, 2013. The petitioners filed counter statement and submitted that the petitioners are unaware of the alleged decree. The petitioners came to know of the decree only after receiving notice in the E.P. The respondent has filed E.P., after 9 years of exparte decree. The petitioners have made improvements and developed the property and value of the property is Rs.50,00,000/- per acre. The petitioners have also stated that they are taking steps to set aside the exparte decree dated 12.01.2004 and prayed for dismissal of E.P. The Execution Court rejected the objection of the petitioners and by the order dated 23.09.2016, ordered E.P.No.50 of 2013 and directed the respondent to file draft sale deed by 18.10.2016.

3.Against the said order dated 23.09.2016, allowing application in E.P.No.50 of 2013 in O.S.No.75 of 2003, the petitioners have come out with the present Civil Revision Petition.

4.Heard the learned counsel appearing for the petitioners as well as the learned Senior Counsel appearing for the respondent and perused the entire materials available on record.

5.The contention of the learned counsel for the petitioners is that the respondent has not executed the exparte decree immediately when the defendant was alive and filed after a delay of 9 years. The petitioners have developed and improved the land and value of the property has increased considerably. The said contentions are not acceptable. The petitioners, as legal heirs of the deceased defendant, are bound by the decree. It is seen from the averments in the counter statement, the petitioners have stated that they are taking steps to set aside the exparte decree before the Executing Court, but they have not filed any details of the steps taken by them. In the grounds of revision, they have not even stated that they have already taken steps to set aside the exparte decree. At the time of hearing the Civil Revision Petition, the learned counsel appearing for the petitioners admitted that they have not filed any

application to set aside the exparte decree dated 12.01.2004. As rightly held by the learned Judge, the Executing Court cannot go behind the execution decree and the judgment passed by the competent court. Considering all the materials in its entirety, there is no error or irregularity in the order of the learned Judge, rejecting the claim of the petitioners and ordering E.P., warranting interference by this Court.

For the above reasons, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

To

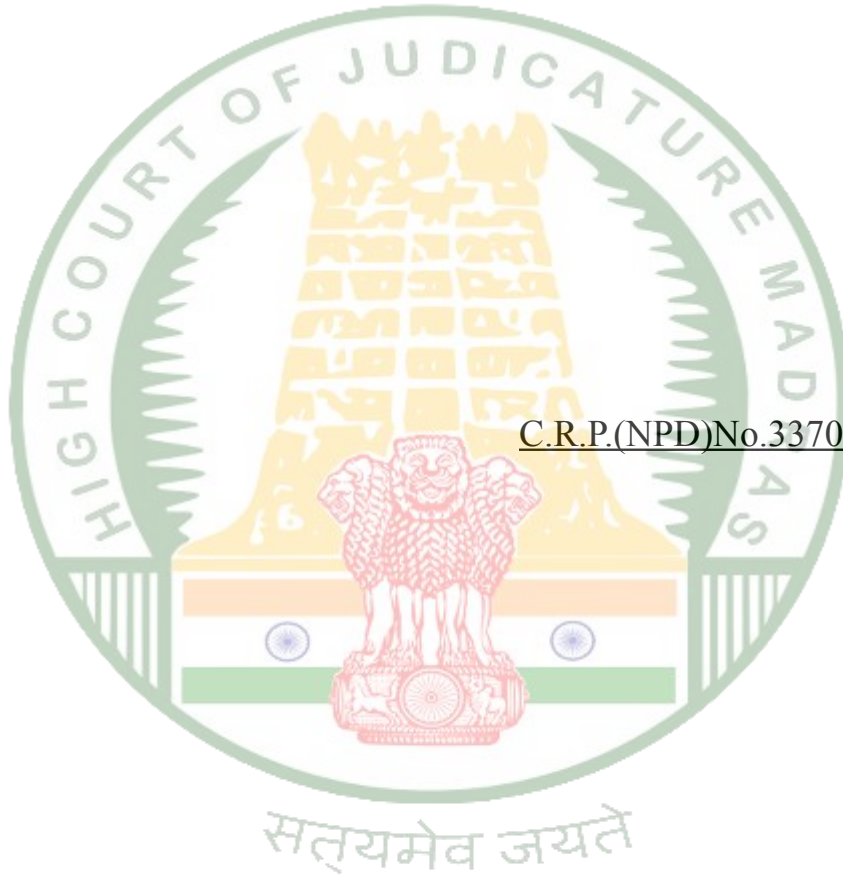
The III Additional District Judge,
Salem.

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V.M.VELUMANI, J.

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