

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).Nos.4105 & 4106 of 2017
and C.M.P.Nos.19237 & 19238 of 2017

CRP (NPD) No.4105 of 2017

S.Khaja Mohideen

...Petitioner

Vs

1.Shanmugavadivu

Arumuga Gounder (deceased)

Mylsamy (deceased)

2.Aruchamy

3.Saraswathy Ammal

4.Meenathi Ammal

5.Sarojini

6.Chandra

7.Rajamani

8.Kannamal

...Respondents

CRP (NPD) No.4106 of 2017

S.Khaja Mohideen

...Petitioner

Vs

1.Kannamal

Arumuga Gounder (deceased)

Mylsamy (deceased)

2.Aruchamy

3.Saraswathy Ammal

4.Meenathi Ammal

5.Sarojini

6.Chandra

7.Rajamani

8.Shanmugavadivu

...Respondents

Prayer in CRP (NPD) No.4105 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 15.06.2017 made in C.F.R.No.3829 of 2017 against E.P.No.47 of 2015 in O.S.No.92 of 2002 on the file of the District Munsif, Pollachi.

Prayer in CRP (NPD) No.4106 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 15.06.2017 made in C.F.R.No.3839 of 2017 against E.P.No.27 of 2015 in O.S.No.92 of 2002 on the file of the District Munsif, Pollachi.

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(in both CRPs)

For Petitioner	: Mr.R.Harishankar
For R1	: Mr.T.P.Manoharan
	Senior Counsel for Mr.R.Nandhakumar
For R2 to R8	: Given up

ORDER

These Civil Revision Petitions are filed against the order dated 15.06.2017 made in C.F.R.Nos.3829 & 3839 of 2017 against E.P.Nos. 47 & 27 of 2015 in O.S.No.92 of 2002 on the file of the District Munsif, Pollachi, thereby rejecting under Order 21 Rule 99 of CPC for seeking order to put the petitioner in possession of the suit schedule property.

2. The 1st respondent in CRP (PD) No.4106 of 2017 and 8th respondent in CRP (PD) No.4105 of 2017, viz., Kannamal filed a suit for partition in O.S.No.92 of 2002 against the other respondents. Pending suit, the property ad-measuring 8.18 acres was purchased by the petitioner from the deceased second defendant. Thereafter, the suit was decreed. On the strength of the preliminary decree, the parties filed a final decree application, in which, the petitioner purchased the part of the property and filed a petition to implead as a party to protect the property purchased by him and the same was dismissed. Thereafter, a final decree was passed.

3. In pursuant to the final decree, the petitioner was taken by the parties in the partition suit. The parties have filed an Execution Petition for delivery of possession, in which, the petitioner filed a petition under Order 21 Rule 99 read with Section 47 of CPC. The same was rejected without

numbering the application for the reason that the same was not maintainable.

4. The learned Senior Counsel for the respondents submitted that already the possession was taken over by the parties concerned and the Execution Petition was also allowed as early as on 15.06.2017. In fact, the petitioner also filed a suit in O.S.No.306 of 2015 on the file of the Sub Court, Pollachi, for declaration and recovery of possession in respect of the property purchased by him, which is pending. Therefore, the petitioner can very well seek prior relief in the suit filed by him in O.S.No.306 of 2015 in the manner known to law.

5. However, the Trial Court in O.S.No.306 of 2015 on the file of the Sub Court, Pollachi is directed to dispose of the suit on merits and in accordance with law, in view of the observation made by the Execution Court in E.P.No.27 of 2015.

6. With the above directions, both the Civil Revision Petitions are

disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

30.03.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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To

The District Munsif,
Pollachi.



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G.K.ILANTHIRAIYAN,J.



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