



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved On : 22.06.2021**

**Delivered On : 09.07.2021**

**CORAM**

**THE HONOURABLE Mrs. JUSTICE R.THARANI**

**C.R.P (NPD) (MD) No.2310 of 2017**

**and**

**C.M.P (MD) No.11183 of 2017**

WEB COPY

Sankari Engineering  
Rep. By its Authorized Signatory,  
G.Rajamanickam,  
S/o, V.Ganesan,  
Door No.R.S-No.21/4B, Main Road,  
Koodapakkam,  
Villliyanur Post,  
Puducherry - 605 110.

... Petitioner/Plaintiff

**-Vs-**

Lingam & Co.,  
Through its Partner,  
L.Kuttalingam,  
Office at Door No.176/3,  
S.N.High Road,  
Tirunelveli Junction - 627001,  
Now Rice Mill Store,  
Opposite to Junction Bus stand Malai Murasu Building,  
Madurai Road,  
Tirunelveli Junction.

... Respondent/Defendant

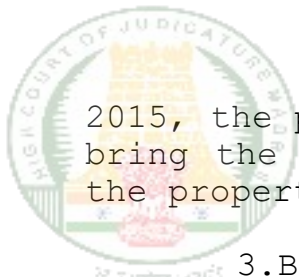
**Prayer:** This Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records pertaining to the fair and decretal order dated 23.11.2016 made in E.A.No.4 of 2016 in E.P.No.6 of 2015 in O.S.No.103 of 2009 on the file of the learned IV Additional District Judge, Tirunelveli and to set aside the same.

For Petitioner : Mr.M.Kalifullah  
For Respondent : Mr.V.Meenalshi Sundaram

**ORDER**

This Civil Revision Petition is filed against the order in E.A.No.4 of 2016 in E.P.No.6 of 2015 in O.S.No.103 of 2009 dated 23.11.2016, on the file of the learned IV Additional District Judge, Tirunelveli.

2.The petitioner herein is the plaintiff and the respondent herein is defendant in the suit. The petitioner herein has filed a suit in O.S.No.103 of 2009 against the respondent/defendant. The suit was decreed on 13.06.2011. To execute the decree, the petitioner has filed a petition in E.P.No.6 of 2015. In E.P.No.6 of



2015, the petitioner has filed an application in E.A.No.4 of 2016 to bring the first item of the property instead of the third item of the property for Court auction sale,

3.Brief substance of the application in E.A.No.4 of 2016 is as follows;-

The suit filed by the petitioner was decreed and the respondent has to pay a sum of Rs.30,83,281/- (Rupees Thirty Lakhs Eighty Three Thousand Two Hundred and Eighty One only) with 12% interest. The petition mentioned properties were also attached. The petitioner filed the execution application for the sale of the properties. The Court ordered only the third item of the property for sale. The third item of the property was situated in a backward area. The first item of the property is located in the main part of Tirunelveli Junction. Only if the first item of the property is brought for sale, the petitioner can get back his amount and prayed the first item of the property to be brought for sale.

4.Though an opportunity was given to the respondent to file counter, he has failed to do so.

5.After hearing petitioner side arguments, the trial Court has dismissed the petition. Against which, the revision petitioner has preferred this revision petition.

6.On the side of the revision petitioner, it is stated that the first item of the property is situated in prime locality and that there will be prospective buyers and prayed the order of the trial Court to be set aside.

7.On the side of the petitioner, it is stated that the decree is for recovery of amount. The value of the third item of the property is Rs.90,00,000/- (Rupees Ninety Lakhs only). The value of the first item of the property is Rs.1,00,00,000/- (Rupees One Crore only). There is no much difference in the value of the properties. There would not be prospective buyers to buy the third item of the property, since it is not in a prime locality. Under Order 21 Rule 64 of C.P.C., the petitioner is at liberty to bring any of the attached item for sale. The respondent has not even filed any counter. In such circumstances, the order passed by the trial Court has to be set aside.

8.On the side of the respondent, it is stated that the decree amount is only Rs.30,00,000/- (Rupees Thirty Lakhs only) and costs. The approximate value of the third schedule property is Rs.90,00,000/- (Rupees Ninety Lakhs only). The sale of the third schedule property is sufficient enough to fulfil the decree amount. After the value is re-fixed, the value of the first item of the property will be Rs.2,00,00,000/- (Rupees Two Crores only). There is no necessity to sell the first item of the property. The third item is sufficient enough to satisfy the decree amount.



9.It is seen that the value fixed for the first item of the property is Rs.1,00,00,000/- (Rupees One Crore only). The value fixed for the second item of the property is Rs.1,25,00,000/- (Rupees One Crore and Twenty Five Lakhs only). The value of the third item of the property is Rs.90,00,000/- (Rupees Ninety Lakhs only). The decree amount is Rs.30,00,000/- (Rupees Thirty Lakhs only) and costs. The contention of the revision petitioner is that there is only a little difference between the value of the first item of the property and the value of the third item of the property. The difference in value is only Rs.10,00,000/- (Rupees Ten Lakhs only). Since the first item of the property is located in prime locality, there may be prospective buyers to purchase the first item of the property.

10.Considering the fact that the difference between the value of both the properties is Rs.10,00,000/- (Rupees Ten Lakhs only) only and considering the fact that first item of the property is in a prime locality and considering that the respondent has not chosen to file any counter in E.A.No.4 of 2016, it is decided that the revision petitioner is at liberty to bring the first item of the property for sale.

11.In the above circumstances, this Civil Revision Petition is allowed and the order passed in in E.A.No.4 of 2016 in E.P.No.6 of 2015 in O.S.No.103 of 2009 dated 23.11.2016, on the file of the learned IV Additional District Judge, Tirunelveli is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cr1)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mrn

**Note :** In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The IV Additional District Judge, Tirunelveli.

+1 CC to M/s.M.KALIFULLAH, Advocate ( SR-21820[F] dated 09/07/2021 )

**C.R.P (MD) No.2310 of 2017**

**09.07.2021**