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C.R.P. (NPD) .No.1310 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(NPD).No.1310 of 2021

and

C.M.P.No.10222 of 2021

Shanthi

.. Petitioner

Vs.

T.D.Subramania Mudhaliar (Died)

T.D.Rajavelu Mudaliar (Died)

1.T.D.Viswanathan

Jagadambal (Died)

2.Lakshmi

3.Thara

4.Jayakumar

Lalli (Died)

5.Ramesh

6.T.S.Sekar

7.M.Pushpa

8.M.Thirumurugan

[The respondents 2 to 8 are represented by
their Power of Attorney T.D.Viswanathan]

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Natesa Mudhaliar (Died)

9.Shanbagavalli

10.Saroja

11.N.Balasubramaniam

12.Indirai

13.Parameswari

14.Devaki

Respondents 9 to 14 – legal heirs of Natesa Mudhaliar (Died).

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition and set aside the order passed by the IX Assistant City Civil Court, Chennai in E.A.Sr.No.48983 of 2019 in E.P.No.249 of 2006 in O.S.No.649 of 1977, dated 26.03.2021.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.T.Easwaradhas

ORDER

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Challenge in this Revision is to the order passed by the Executing Court on the memo filed by the decree holders who seek to execute the decree in the suit instituted by them in O.S.No.649 of 1977.

2. The suit was one for possession and the same was decreed on 14.08.1981. An appeal against that judgment and decree was dismissed by the District Court, Chengelpattu on 22.11.1982. The Second appeal filed therefrom in S.A.No.1087 of 1983 was dismissed by this Court on 30.12.2003.

3. Thereafter, the execution petition came to be filed. All the judgment debtors except the 8th judgment debtor remained *ex parte*. The 8th judgment debtor filed an application in E.A.No.3570 of 2006, purportedly under Section 47 of the Code of Civil Procedure raising the dispute regarding the identity of the property.

4. The suit schedule property was described as Door No.225



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Sengunthar Street, Velacherry, while filing the suit in the year 1977.

Subsequently, the name of the street was changed as Gandhi Road and the property was given two door Nos.224 and 225. The judgment debtor very cleverly contended that there is dispute regarding the identity of the property and therefore the decree cannot be executed. The Executing Court, fortunately for the decree holders, saw through the game and concluded that there is no dispute regarding the identity of the property and the present Door Nos.224 and 225 Gandhi Road is the same as Door No.225 Sengunthar Street, Velacherry, namely the suit property.

5. This order in the application filed under Section 47 of the Code of Civil Procedure was challenged before this Court in CRP.No.1829 of 2006 and this Court dismissed the Revision on 22.01.2007 confirming the factual finding that the present Door Nos:224 and 225, Gandhi Road is the same as Door No:225, Sengunthar Street. Thereafter, the judgment debtor filed a Special Leave Petition before the Hon'ble Supreme Court. Leave was granted and the Special Leave Petition was numbered as Civil Appeal No.10442 of 2011. The Civil Appeal was also dismissed on 24.10.2018.

6. After all these years, now the Amin who went to deliver the



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property, strangely returned the warrant stating that the warrant could not be executed because of the dispute in the identity of the property. In view of the said return, which is probably stage managed by the petitioner herein, the decree holders filed a memo seeking Police protection. The Executing Court granted Police protection. It is against this order, the judgment debtor No.8, who has been able to avoid the execution for nearly 40 years now, has come up with this Civil Revision Petition.

7. Mr.V.Raghavachari, learned counsel appearing for the petitioner would vehemently contend that there is still a dispute regarding the identity of the property and without identifying the property delivery cannot be effected.

8. I am unable to accept the submission of the counsel. The very question of identity was raised under Section 47 of the Code of Civil Procedure in the application in E.A.No.3570 of 2006 and the Executing Court decided that the property now situate at Door Nos.224 and 225, Gandhi Road, is the same as Door No.225, Sengunthar Street, Velacherry, which is subject matter of suit in O.S.No.649 of 1977. The said finding was



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confirmed by this Court in CRP.No.1829 of 2006. A Civil appeal against the judgment of this Court in CRP.1829 of 2006 also came to be dismissed by the Hon'ble Supreme Court. It is therefore crystal clear, all that the petitioner is seeking is only re-litigation or re-agitation of the same question once over again, with the help of the report of the court Amin, which she is able to procure.

9. Hence, I do not find any merits in the Revision. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed. The Executing Court is directed to proceed with the execution and ensure that the delivery is effected before 15th February 2022. The Executing Court shall file a report of compliance with the Registrar Judicial of this Court by 28.02.2022.

06.01.2022

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