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CRP(MD)Nos.1041, 1042 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)Nos.1041, 1042 of 2022

and

CMP(MD)Nos.4178, 4179 of 2022

R.Mahalingam : Petitioner in both CRPs

Vs.

S.Varalakshmi : Respondent in both CRPs

PRAYER in CRP(MD)1041/2022: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the Docket Order passed by the 3rd Additional Subordinate Court, Madurai, dated 12.04.2022, in EP.No.9 of 2021 in O.S.No.933 of 2013 and set aside the same.

PRAYER in CRP(MD)1042/2022: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the order passed by the 3rd Additional Subordinate Court, Madurai, dated 04.03.2022, in un-numbered EA.SR.No.2952 of 2022 in EP.No.9 of 2021 in O.S.No.933 of 2013 and set aside the same.



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For Petitioner : Mr.P.Pethu Rajesh

For Respondent : Mr.PT.S.Narendravasan

[In both CRPs]

COMMON ORDER

The civil revision petition in CRP(MD)No.1041/2022 is filed as against the delivery order passed by the learned 3rd Additional Subordinate Judge, Madurai, in EP.No.9 of 2021 in O.S.No.933 of 2013, dated 12.04.2022. The civil revision petition in CRP(MD)No.1042/2022 is filed as against the order passed by the learned 3rd Additional Subordinate Judge, Madurai, in un-numbered EA.SR.No.2952 of 2022 in EP.No.9 of 2021 in O.S.No.933 of 2013, dated 04.03.2022. Both these civil revision petitions are filed by the petitioner / judgment debtor.

2.The respondent / plaintiff has filed the suit in O.S.No.933 of 2013 before the 3rd Additional Subordinate Court, Madurai, for declaration and for recovery of possession. The suit was decreed on 20.08.2018. Aggrieved, the petitioner has preferred an appeal before the 4th



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Additional District Court, Madurai, in A.S.No.104 of 2018 and the same was dismissed on 26.02.2020. Aggrieved, the petitioner has preferred a second appeal before this Court in S.A(MD).No.26 of 2021 and the same was also dismissed on 21.01.2021.

3.The respondent / decree holder thereafter filed the execution petition in EP.No.9 of 2021 and the Execution Court, by order dated 12.04.2022, ordered for delivery. In the meantime, the petitioner / judgment debtor has filed an application in EA.SR.No.2952 of 2022 to appoint an Advocate Commissioner under Order 26 Rule 9 CPC to identify, inspect and measure the schedule mentioned property as per Ex.B9 with the help of a Taluk Surveyor in the presence of revenue officials and the competent authorities from the Highways Department, to note down the physical features and to file a report. The said application was returned by the Execution Court on 04.03.2022 that how the petition is maintainable in the execution proceedings. As against this docket order, CRP(MD)1043/2022 was filed and as against the order of delivery, CRP(MD)1042/2022 was filed.



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4.Learned Counsel for the petitioner submitted that the petitioner is having a right over the property in Re.S.No. 129/4A2A in UDR S.No.143/4A2E2 to the extent of 2 cents 173.5 sq.ft. His continuous possession and enjoyment of that property was established in O.S.No.597 of 2004 filed against the plaintiff's husband before the District Munsif Court, Madurai. The respondent is having 14 cents of land south of the petitioner's land and her son is having 28.5 cents and her husband is having 41.5 cents of land adjacent to his property. They do not have access to their property and therefore, they are giving hindrance to the respondent one after another to usurp his property and has filed the suit in O.S.No.933 of 2013.

5.He further submitted that pending the suit, the respondent has taken out an application for appointment of Advocate Commissioner to inspect her property and to note down the physical features. The learned Advocate Commissioner, without properly measuring the property and without any evidence on record, declared that the petitioner's property at the northern side of the respondent's property was acquired by the Highways



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Department and that the petitioner encroached upon the plaintiff's land to the extent of 3 cents. Though the petitioner has made an objection for the Advocate Commissioner's report, the suit was decreed in favour of the respondent. Both the first appeal and second appeals preferred by the petitioner were dismissed. However, while dismissing the second appeal, this Court has protected his possession with regard to the property in R.S.No.143/4A2E, as it was already protected by the injunction decree granted in O.S.No.597 of 2004.

6.According to the learned Counsel for the petitioner, after the dismissal of the second appeal, the respondent filed the execution petition and in the execution application, the petitioner has taken out this application for appointing an Advocate Commissioner to identify his property, which has been protected by the injunction granted in O.S.No.597 of 2004, with the help of a Taluk Surveyor in the presence of the revenue officials and officials from the Highways Department. The said application was, however, returned without considering the grounds raised therein. Simultaneously, the Execution Court



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has passed an order of delivery of possession by
10.06.2022.

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7.Learned Counsel for the respondent submitted that the petitioner claims to have purchased the property through an unregistered deed, but has occupied 3 cents of land of the respondent's property. The respondent purchased her property from M/s.Bhoruka Industries Pvt Ltd to an extent of 42.5 cents. 3 cents out of this 42.5 cents have been encroached by the petitioner and therefore, the respondent filed the suit. While decreeing the suit, the trial Court has given a categorical finding that the survey number claimed by the defendant and the plaintiff are not same. The defendant claims to have purchased through an unregistered sale deed in S.No.143/4A2E under Ex.B9. However, the property purchased by the plaintiff vide Ex.A1 is in S.No.146/3A.

8.He further submitted that after the dismissal of the first appeal and the second appeal, the respondent has filed the Execution Petition and the Execution Court ordered for delivery. The judgment and decree in S.A.



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(MD)No.26 of 2021 dated 21.01.2021 became final and the defendant has not preferred any Special Leave Petition as against the same. Based on the judgment and decree passed by the Courts, the delivery was ordered by the Execution Court. In fact, in the suit, an Advocate Commissioner was appointed to measure the suit property with the help of a Surveyor. The property was measured and a report was also filed stating that 3 cents out of 42.5 cents have been encroached by the petitioner. Though the petitioner has filed an appeal before the District Court as well as this Court, he has not taken out any plea for appointment of an Advocate Commissioner to re-measure the property, but filed this application in the execution stage only to drag on the proceedings.

9.This Court considered the rival submissions made and also perused the available materials.

10.These civil revision petitions are filed as against the order of delivery and as against the return of application filed by this petitioner for appointment of an Advocate Commissioner. The respondent has filed the suit



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for declaration and recovery of possession. It was decreed in her favour by judgment and decree dated 20.08.2018. The appeal filed by the petitioner before the 4th Additional District Court, Madurai, in A.S.No.104 of 2018 was dismissed on 26.02.2020 and the second appeal preferred by him before this Court in S.A.(MD)No.26 of 2021 was also dismissed on 21.01.2021. The Execution Petition was filed on 05.03.2021. After providing sufficient opportunity, the delivery was ordered on 12.04.2022.

11.The Execution Court cannot go beyond the decree, which has already been confirmed by the High Court. It is the apprehension of the petitioner that his property in S.No.143/4A2E would be disturbed by the delivery ordered by the Execution Court. The trial Court, while decreeing the suit, has categorically held that the survey number claimed by the plaintiff [S.No.146/3A] and the defendant [S.No. 143/4A2E] are not same. The petitioner claims to be having an injunction decree in O.S.No.597/2004, in his favour in respect of the property in S.No.143/4A2E, which admittedly is not the subject property herein. Under such circumstances, this Court is of the view that the trial



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Court has rightly rejected the application taken out by the petitioner for appointing an Advocate Commissioner in the execution proceedings.

12.For the foregoing reasonings, this Court is not inclined to interfere with the impugned orders passed by the Execution Court. Accordingly, both the civil revision petitions are dismissed. It is made clear that the decree is to be executed in its *stricto senso*. The Court Amin, Taluk Surveyor and concerned revenue officials are expected to effect the delivery, strictly in accordance with the decree, leaving the petitioner's property in R.S.No. 143/4A2E, which was protected by an injunction decree granted in O.S.No.597 of 2004. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

The 3rd Additional Subordinate Judge,
Madurai.



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B. PUGALENDHI, J.

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