



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD)No.2204 of 2017

WEB COPY

1.Muthappan

2.M.Raju

3.Jasmine Sheeba

... Petitioners/Petitioners/
Decree holder/Plaintiff

-vs-

1.Thankappan

2.Thankaraj

... Respondents/Respondents/
Judgment debtors/ Defendants

Prayer :- Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 07.07.2017 in E.A.No.199 of 2016 in E.P.No.46 of 2015 in O.S.No.140 of 2013 on the file of the Principal District Munsif Court, Kuzhithurai, Kanyakumari.

For Petitioners	: Mr.S.Ramakrishnan
For R2	: Mr.N.Subramanian
For R1	: No appearance

ORDER

This civil revision petition is filed challenging the order passed by the learned Principal District Munsif, Kuzhithurai, Kanyakumari in E.A.No.199 of 2016 in E.P.No.46 of 2015 in O.S.No.140 of 2013 on the file of the Principal District Munsif, Kuzhithurai, Kanaykumari.

2.The application in E.A.No.199 of 2016 was filed by the revision petitioner herein to reissue the delivery list to the Amin to include C and D schedule properties in the delivery list on the ground that the final decree was passed allotting plot 'A' measuring 0.750 sq.links of Ex.C.2 plan which is part of the D schedule property, but the Amin has omitted to include C and 'D' schedule property in his delivery list accidentally. Therefore, it is necessary to include C and D schedule property in the delivery list. Therefore, the petitioner filed the above execution application. However, the Court below, after hearing both parties, passed the very detailed order in dismissing the above application and relevant portions are extracted hereunder:-

4.Heard. Records perused. On perusal of the records it is found that the petitioner/decrece holder



has filed the suit in O.S.No.140 of 2013 for partition of 1/3rd right in D schedule property and the same was decreed and final decree was passed allotting Plot A of Ex.C2 plan and on the basis of final decree the petitioner/decreed holder filed execution petition for delivery of the same and this Court by order dated 03.11.2015 was ordered for delivery of Plot A measuring 0.750 cents of Ex.C2 plan and thereafter the Amin visited the property and filed delivery list and so this Court terminated the EP on 04.12.2015 stating that "Amin report perused, delivery effected, Amin executed the warrant as per the decree list submitted hence EP is terminated" and now the petitioner/decreed holder has sought to reissue the delivery list on the ground that though the property was delivered as per the decree, the Amin has omitted to mention the C and D schedule property in the delivery list that is found in the plaint and decree and so sought to include the said C and D schedule property in the delivery list.

5.For which the respondent strongly objects that there is no plot like D schedule property on land and D schedule property is a boundary which is only pathway available to the judgment debtors only on the compromise made by the Decree Holder the respondent has not diligently proceeded with the case and so sought to dismiss the petition.

6.Admittedly, in the plaint there was four schedule properties as 'A' to 'D' schedule properties. D schedule property is the area measuring 2.250 cents, in which the plaintiff has sought for partition of his 1/3rd share and the same was decreed and plot A measuring 0.750 cents of Ex.C2 plan was allotted and therefore, execution petition was filed in which delivery of the plot A of Ex.C2 plan measuring 0.750 cents was ordered and Amin was deputed. Amin after executing the warrant filed delivery list. Now the petitioner seeks to include C and D schedule property in the delivery list. Amin was examined as CW1 and he reported that as per decree he delivered the property. But there is no mentioning about all the schedule properties that is mentioned in the plaint and the decree. Admittedly it is not the case of the petitioner that plot A of Ex.C2 plan was not delivered and the delivery order was passed by this Court is very clear that plot A of C2 plan of the schedule property was ordered to be delivered to the petitioner and the same was effected by Amin and



therefore non mentioning of the same in the delivery list no way affect the petitioner. Hence, this Court is not inclined to allow this application.

3. On a perusal of the order, it is very clear that D schedule property was about 2.250 cents. The suit was decreed allotting $1/3^{\text{rd}}$ of the share in D schedule property in favour of the petitioner herein and $1/3$ was marked in the plan as Ex.C2 in favour of the plaintiff to the extent of 0.750 cents and the same was already handed over to the petitioner. Therefore, the Court has come to the conclusion that as per the decree and the order passed by the Court below in the Execution Petition, the Amin was visited the property and handed over the property and nothing left to hand over.

4. This Court has also perused the same and does not find any error in the order of the Court below. Hence, this Court of the view that order passed by the Court below is correct and the same need not interfered with. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

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

The Principal District Munsif,
Kuzhithurai,
Kanyakumari.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.D.CHRISTENSON JUGUNU, Advocate (SR-
11042[F] dated 10/03/2022)

C.R.P.(MD)No.2204 of 2017

Dated: 09.03.2022

RD(05.04.2022) 3P 5C

<https://hcservices.ecourts.gov.in/hcservices/>