



C.R.P.No. 905 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

C.R.P.No.905 of 2023

and

C.M.P.No.6762 of 2022

D. Srinivasan

.. Petitioner

Vs

1.F.X. Dany

2.Sundari

3.Reetabai

4.Tamilselvan

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside docket order passed in unnumbered E.A.SR.No.74012 of 2022 in E.P.No.1936 of 2007 in O.S.No.2138 of 2023 dated 10.03.2023 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioner : Mr. C.B. Muralikrishnan

For Respondents : Mr. A.S. Narasimhan, for R2 to R4



WEB COPY



C.R.P.No. 905 of 2023

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in unnumbered E.A.SR.No.74012 of 2022 in E.P.No.1936 of 2007 in O.S.No.2138 of 2003, the defendant has preferred this revision.

2. The revision petitioner as a judgment debtor who filed application challenging the docket order passed by the executing Court in E.A.S.R.No.74012 of 2022 in E.P.No.1936 of 2007, he preferred the revision.

3. Before the executing Court as a judgment debtor filed a said obstruction petition stating that there is dispute regarding identification of the property and the decree holder is attempting to take larger extent than what he was entitled, so he raised objection. The petition was rejected by the executing Court, stating that the allegations in the petition is baseless and on following the due process of law, the sale proclamation was performed.

4. Challenging the same, this revision has been filed.



C.R.P.No. 905 of 2023

WEB COPY

5. The learned counsel for the auction purchasers / respondents submits that by proper concern proclamation, purchased the property by depositing the auction amount much long in the year 2007. Based upon that sale certificate also issued and the case is posed for delivery of the property, at that time, the judgment debtor raised objection stating that there is an excess extent of land is available and the identification property is also under dispute. But on considering the entire facts, it reveals that in the year 2007 the respondents, as auction purchasers, purchased the property through Court of law through execution proceeding and now they proceed with the execution proceeding to take the delivery of the property.

6. At this juncture, the judgment debtor who remained ex parte in the original suit proceedings, filed his obstructions stating that on ground more than 6000 sq.ft is available. However, in respect of the sale made by him, the respondents are only entitled for 5331 sq.ft with four boundaries.



C.R.P.No. 905 of 2023

7. To avoid further complications, this Court is inclined to direct the executing Court to appoint an Advocate Commissioner to measure the property with the help of the surveyor and allot the property to the decree holder / auction purchaser what he purchased through Court auction for an extent of 5331 sq.ft and if at all any excess land is available, then it is up to the judgment debtor to work out his remedy as per the manner known to law.

8. Accordingly, this Civil Revision Petition is disposed of with the following direction: -

(i) The executing Court is directed to appoint an Advocate Commissioner and he should submit the report within three weeks. Thereafter, the executing Court is directed to order for delivery in respect of the property as per the description in the execution application for an extend of 5331 sq.ft.

9. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.10.2023

Index :Yes/No
Neutral Citation :Yes/No
AT



C.R.P.No. 905 of 2023

To
The IX Assistant City Civil Court, Chennai.



WEB COPY



C.R.P.No. 905 of 2023

T.V.THAMILSELVI, J.

AT

C.R.P.No.905 of 2023 and
C.M.P.No.6762 of 2022

19.10.2023