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CRP.NPD Nos.1532, 1534 and 1536 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

C.R.P.NPD.Nos.1532, 1534 and 1536 of 2023

a n d

C.M.P.Nos.10096, 10113 and 10120 of 2023

1. Jayaseeli Rajarathinam

2. Nimmi @ Nirmal Mary

3. Gerald

...

Petitioners in all the
C.R.Ps

Vs

1. Palani

2. The District Collector
Chengalpattu District 603 001.

3. The Tahsildar
Chengalpattu Taluk
Chengalpattu District 603 001...

Respondents in all the
C.R.Ps

Common Prayer: Petitions filed under Article 115 of the Constitution of India, against the order and decretal order dated 25/1/2023 made in E.A.Nos.6, 7 and 5 of 2022 in E.P.No.43 of 2004 in O.S.No.208 of 1991 on the file of the District Munsif Court, Chengalpattu.



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For Petitioner

...

Mr.S.Anand

For respondents

...

Ms.S.P.Aarthi
for Caveator

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COMMON ORDER

These Civil Revision Petitions have been filed aggrieved by the common order dated 25/1/2023 in E.A.Nos.6, 7 and 5 of 2022 in E.P.No.43 of 2004 in O.S.No.208 of 1991 on the file of the District Munsif Court, Chengalpattu.

2. Facts in brief that are necessary for the disposal of these Civil Revision Petitions are as follows:-

One Kuppusamy Naicker has filed O.S.No.208 of 1991 on the file of the District Munsif Court, Chengalpattu, against the District Collector and 8 others seeking for declaration of title and for recovery of possession in respect of schedule of property and to pay past and future profits. The said suit was decreed. Aggrieved by the same, the defendants have preferred appeal in A.S.No.20 of 2000 on the file of the I Additional District Judge (Fast Track Court No.I), Chengalpattu and same was



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dismissed on 06.04.2004. Second Appeal was preferred on the file of this Court in S.A.No.2171 of 2004 and the same was also came to be dismissed on 10/7/2007.

3. After reaching the finality, the respondent/decreed holder has filed E.P.No.43 of 2004 for execution of decree in O.S.No.208 of 1991. The petitioners/judgment debtor filed E.A.No.5 of 2022 under Section 151 of C.P.C. to defer recording of delivery of E.P Schedule property. E.A.No.6 of 2022 is filed for restitution of possession of the petition schedule property under Section 144 and 151 of C.P.C. E.A.No.7 of 2022 is filed under Order XXVI Rule 9 of C.P.C. to appoint an Advocate Commissioner to measure and identify the EP schedule property with the help of Head Surveyor and to note down the physical features and take photos.

4. All the three E.As were dismissed by way of a common order, dated 25/1/2023. Heard Mr.S.Anand, learned counsel for the petitioners and Mr.S.P.Arthi, learned counsel for the first respondent and perused the record.



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5. It is the submissions of the petitioners/judgment debtor that there is no proper description of the property in the decree of O.S.No.208 of 1991 thereby, EP schedule of property cannot be identified and that number of times, the Execution Court was unable to identify the EP schedule of property and that delivery warrant was also returned but on 20th June 2022, EP schedule property was delivered to respondent/defendant without properly identifying the same.

6. The main contention of the petitioner/judgment debtor is that EP schedule property could not be properly identified as per the decree, the bailiff/court officer could have refused to deliver the property. The schedule property was delivered to respondent/decree holder without even properly identify the same. There is no record placed by the petitioners/judgment debtor to show that the description of EP schedule and the property that was delivered to respondent/decree holder are not one and the same. However on 20/6/2022 the delivery warrant was executed and possession of EP schedule property was delivered to the respondent/decree holder. Except oral assertion that the description of the schedule mentioned in the warrant was not tallied with the actual



position, there is no material to that extent. If at all the property cannot be identified, then, the bailiff could have again filed a report that he cannot execute the warrant as the description is not tallied with the actual possession. Nothing is attributed against the bailiff as to why he filed wrong report. Therefore, the contention of the petitioner/judgment debtor that on account of improper description of the schedule of property, warrant was not properly executed is devoid of merits. Further, above all since the court officer/bailiff has already delivered the possession to the respondent/decree holder, the petition filed in E.A.No.5 of 2022 seeking to defer the recording of delivery of E.P. schedule property become infructuous.

7. It is further submitted by the learned counsel for the petitioners that even though the possession was delivered by bailiff, the Court has not yet recorded the same, hence this Court can still intervene. The contention of the petitioner is not convincing. After delivery of EP schedule, the bailiff will file a report before the concerned Court and Court will record the same. Once the Court has issued a warrant, directing the bailiff to deliver the EP schedule property, as per the warrant, and once the court officer/bailiff delivers the EP schedule



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property to the respondent/decree holder as per the schedule, then the delivery warrant was executed. The delivery of property was completed once decree holder received the possession of the schedule of property through the bailiff. Hence, the submissions of the petitioner/judgment debtor that court has not yet recorded the delivery of the EP schedule property thereby this Court can intervene is not convincing. As the possession of the EP schedule property was taken over by the decree holder, the petitioner cannot seek to defer from recording delivery of possession.

8. Further, the petitioner/judgment debtor has filed E.A.No.6 of 2022 for restitution of the EP schedule property from respondent/decree holder to petitioner/judgment debtor. That means even regarding to petitioner/judgment debtor, the schedule of property was already delivered to respondent/decree holder. Once restitution of EP schedule property is sought for, then it is deemed that the petitioner/judgment debtor has admitted about delivery of property by the court officer/bailiff as per EP schedule.

9. E.A.No.6 of 2022 is filed for restitution of possession of the



schedule of property. According to the petitioners/judgment debtors, only part of the EP schedule of property belong to decree holder and rest of the property belongs to the Government. There is no record before the Court to the effect that part of the property is belongs to Government. If at all major portion of the EP schedule of property belongs to the Government. The Government could have certainly intervened and resisted for delivery of possession or should have taken steps to restore it back. But nothing of that sort happened.

10. It is also brought to the notice of this Court by the first respondent/decreed holder that during the course of trial, an issue was framed by the trial Court as to whether the schedule of property belong to the Government and that the said issue was decided in favour of the decree holder and against the Government and it has become final. That means, the contention of the petitioners/judgment debtors that part of the schedule of property belong to the Government and thereby, the property cannot be delivered to the decree holders has no basis.

11. In I.A.No.6 of 2022, the petitioners/judgment debtors has sought for restoring of entire property back to them. Once the petitioners



contend that major part of the schedule property belongs to Government and only small extent of the schedule of property belongs to first respondent/judgment debtor, the petitioners/judgment debtor cannot seek to restore the entire schedule of property in his favour as petitioners/judgment debtors are having interest only in respect of the part of the schedule of property.

12. E.A.No.7 of 2022 is filed for appointment of Advocate Commissioner to note down the physical features to take the pictures and to draw the rough sketch of the EP schedule of property. It is to be noted that the petitioners can seek these reliefs if the Court officer/ bailiff fails to identify the property and submits a report to the Court to that extent. However, the court officer/bailiff has identified the EP schedule property as per the schedule of warrant and on 20/6/2022 possession was also delivered to respondent/decree holder. Once the possession of the schedule of property was delivered to the first respondent/decree holder then, the petitioners/judgment debtor cannot seek for appointment of an Advocate Commissioner, to identify the EP schedule of property.

13. Considering all these above, this Court is of the opinion that the



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trial Court has rightly dismissed all the applications and this Court is in total agreement with the findings of the trial Court and thereby all the Civil Revision Petitions deserve dismissal.

14. In the result, these **Civil Revision Petitions are dismissed.** No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

30/6/2023

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

The District Munsif Court, Chengalpattu.



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DR.D.NAGARJUN,J

mvs.

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