



C.R.P.Nos.2733, 2734 and 2735 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition Nos.2733, 2734 and 2735 of 2019
and C.M.P.No.17975 of 2019

1.Sivakozhunthu
2.Rajamani
3.Mallika

... Petitioners in
all the CRPs

-Vs-

1.Saraswathi
2.Saradha
3.S.Rajasekar
4.S.Padma
5.Dhanalakshmi (Given up)
6.Kavitha
7.S.Suganya
8.Venkatesan
9.Gowri

... Respondents in
C.R.P.No.2733 of 2019

Prayer in CRP No.2733 of 2019 : Civil Revision Petition under Article 227 of the Constitution of India to set aside the Fair order and decretal order dated 25.01.2019 passed in EA No.58 of 2018 in EP No.158 of 1993 in OS No.769 of 1987 on the file of Principal District Munsif Cuddalore.

Prayer in CRP No.2734 of 2019 : Civil Revision Petition under Article 227 of the Constitution of India to set aside the Fair order and decretal order dated



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25.01.2019 passed in IA No.126 of 2018 in OS No.769 of 1987 on the file of Principal District Munsif Cuddalore.

Prayer in CRP No.2735 of 2019 : Civil Revision Petition under Article 227 of the Constitution of India to set aside the Fair order and decretal order dated 25.01.2019 passed in IA No.125 of 2018 in OS No.769 of 1987 on the file of Principal District Munsif Cuddalore.

In all C.R.Ps.

For Petitioners : Mr.R.Gururaj
For Respondents : Mr.D.Ravichander - for R1 to R3

COMMON ORDER

The Civil Revision Petitioners are the judgment debtors in O.S.No.769 of 1987. The said matter was taken on first appeal to the Sub-Court, Cuddalore in A.S.No.16 of 1992 and was dismissed on 26.08.1992, against which a further appeal was preferred before this Court and that also ended in dismissal confirming the lower Court decree dated 10.04.1991.

2. In order to execute the decree, the judgment debtor took steps and filed E.P.No.158 of 1993. During the execution proceedings, it came to notice that there was a re-survey which was conducted after the agreement was entered into between the parties and Old Survey No.506 had been re-numbered as S.No.324/1A1A during the Natham survey. Consequently, when the decree holder accompanied by the bailiff visited the suit property for the purpose of taking delivery, they were unable to execute the same as the old survey number has been replaced by the new survey number.



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3. Apart from that, it is case of the decree holders that pending the execution, Chakrapani Naidu who was occupying the Southern and Eastern side of the property had passed away and his grandsons by name Ramesh and Sridhar are in occupation today. Similarly, insofar as the Western side of the property is concerned, the property which was occupied in the year 1987 by one Jayaram Naidu, is now occupied by one Jayakumar.

4. In order to bring these facts to the notice of the Court, three applications were filed in I.A.Nos.125 and 126 of 2018 and E.A.No.58 of 2018. These applications were to amend the plaint, to amend the decree and to amend the schedule. Corresponding provisions are Order VI Rule 17, Sections 152 and 153 and Order XXI Rule 11 of Civil Procedure Code. The said applications came to be allowed on the ground that the Court has the power to amend the decree in order to bring it in line with the original decree of the Court dated 10.04.1991. It is against this order that the present civil revision petitions are filed.

5. Mr.R.Gururaj, learned counsel for the petitioners would submit that it is the duty of the plaintiffs to ascertain the correct survey number at the time of filing of the suit and also to give proper boundaries. He would state that the respondents 1 to 3 / decree holders did not seek for amendment, but obtained a second order of delivery knowing pretty well that the survey number and the boundaries as on the



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date of the decree did not tally on the ground as on today. He would further state that equity cannot be replaced by the law of limitation and therefore would seek for setting aside the order and decretal order in the aforesaid applications.

6. Mr.D.Ravichander, learned counsel for the respondents / decree holders would submit that all that is being done is bringing the decree in accordance with the situation as prevailing today and no prejudice would be caused to anyone.

7. Heard the learned counsel on either side and persued the materials placed on record.

8. A perusal of the dates set forth above would go to show that the Natham Survey had taken place during the pendency of the proceedings initiated by the respondents 1 to 3. The amendment that is being sought for is not to bring forth a new property, but bringing the decree in accordance with the situation prevailing as on date. A perusal of the schedule to the execution petition would show that the old Survey Number is 506 and the present Survey Number is 324/1A1A. At no point of time there has been a dispute in the identity of the property. At the time of filing of the suit, Chakrapani Naidu and Jayaram Naidu were alive and now they having passed away, in order to bring to the notice of the Court the present occupants of the property, that portion of the plaint, decree and execution petition have been sought to be amended.



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9. It is the duty of the Court to lean in favour of a decree holder, especially in a case which is pending from 1987. The amendment sought for neither changes the schedule of property by bringing a new property in the schedule, nor does it change the cause of action. It is only sought for in order to clarify the situation which exists as on today. I do not find any error or irregularity in the order. The Civil Revision Petitions deserve to be dismissed and are accordingly dismissed. No costs.

10. At this stage, Mr.Gururaj seeks time to file additional counter to the amended execution petition. Two weeks time is granted to the judgment debtor to file a counter. He also informs me that execution petition has been transferred from the file of District Munsif Court, Cuddalore to the file of the District Munsif, Kurinjipadi. After the period of two weeks is over for filing of additional counter, the learned District Munsif, Kurinjipadi shall take steps to execute the decree and take appropriate steps to see that the decree holders get the benefit of the decree. The said exercise shall be completed on or before 31.12.2023.

11. With the above directions, the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Index : Yes/No

NCS : Yes/No

KST



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V. LAKSHMINARAYANAN, J.

KST

To

1. Principal District Munsif Cuddalore
2. Principal District Munsif, Kurinjipadi.

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