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C.R.P.(NPD)No.3526 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD)No.3526 of 2017
and CMP.No.16317 of 2017

1.R.Ranguthai (Deceased)

2.R.Thangavel .. Petitioners
(2nd Petitioner brought on record as LR of the deceased
sole Petitioner viz. R.Ranguthai vide order of Court
dated 16.11.2017 made in CMP.No.19251/2017 in
CRP.No.3526/2017 by this Court)

VS

T.Duraisamy .. Respondent

Petition filed under Article 227 of the Constitution of India against
the Fair and Decretal Order dated 14.07.2016 made in E.P.No.26 of 2015
on the file of the District Munsif Court, Sathyamangalam in O.S.No.221
of 1991 on the file of the Sub-Ordinate Judge Court, Gobichettipalayam
and prays to set-aside the same.

For Petitioners : Mr.Roshan Atiq

For Respondent : Mr.J.Titus Enock



C.R.P.(NPD)No.3526 of 2017

ORDER

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'S.F.No.72/1 extent being 1.97.5 Hectres (4.89 acres) in this common 1/2 dry land acres 2.44 ½ garden land with one well in this common 1/2 share fitted with 5.H.P. electric motor pumpset, service connection No.9 with all the deposits; in this common 1/2; a south facing tiled salat measuring attached thereto with all the standing trees, and the mamool right of cart-track and etc., situated at Sellappampalayam village in Sathyamangalam taluk within the sub-registration District of Punjai puliampatti and registration District of Gobichettipalayam.'

2.Against the said decree, a regular appeal was filed before the First Additional District Judge in A.S.No.48 of 1996. The said appeal was dismissed on 29.04.1997. Challenging the dismissal of the First Appeal, the Second Appeal was filed before this Court in S.A.No.1051 of 1997. The Second Appeal was also dismissed on 01.02.2011.

3.Challenging the concurrent finding, a Special Leave Petition was



C.R.P.(NPD)No.3526 of 2017

preferred in SLP(Diary)No.19776 of 2011. The SLP was also dismissed.

After all these proceedings against the decree was over, an execution petition was filed in E.P.No.26 of 2015 on the file of the District Munsif Court, Sathyamangalam. The said EP was ordered. Challenging the same, the present revision has been filed.

4.Mr.Roshan Atiq, learned counsel appearing for the petitioner would submit that the property, which is the subject matter of O.S.No.221 of 1991, was only half share as is seen from the aforesaid schedule mentioned property. He states the other half share continues to be with the civil revision petitioner. So delivery could not have been ordered.

5.The decree relates only to the property that was agreed to be sold by Rangappa Gounder, the original judgment debtor. The decree holder Duraisamy is entitled for that right in the property, which Rangappa Gounder had. Unfortunately, Rangappa Gounder died pending the proceeding. Leaving behind as his legal heir, Ranguthai, his sister. It is not in dispute that the brother and sister were in joint possession of the property as individual owners.

6.By virtue of the decree in O.S.No.221 of 1991, the share of



C.R.P.(NPD)No.3526 of 2017

Rangappa Gounder stood transferred in favour of Duraisamy. Therefore, in a case of joint possession, the Court will necessarily have to follow the provision relating to Order 21 Rule 35(2). The question of granting symbolic possession would not arise as contemplated under Order 21 Rule 36. Symbolic possession would arise when the property is in possession of a third party. When it is in joint possession, the appropriate provision is Order 21 Rule 35(2). This is exactly what the trial Court has done. I do not find any illegality or irregularity in the matter. This civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

1.The District Munsif Court,
Sathyamangalam.

2.The Sub-Ordinate Court,
Gobichettipalayam.

V. LAKSHMINARAYANAN,J.



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