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CRP No. 4439 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.11.2023

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4439 of 2023

and

C.M.P.No.26814 of 2023

M.Kamaraj

... Petitioner

Versus

B.Rajamanickam (deceased)

1.R.Margaret

2.R.Kannan

3.R.Raghu

4.R.Manjula

5.R.Malliga

6.M.Panneerselvam

7.M.Prakash

... Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the impugned order dated 27.09.2023 and made in E.A.No.5090 of 2018 in E.P.No.1600 of 2016 on the file of the learned X Assistant Judge, City Civil Court, Chennai by allowing this CRP.

For Petitioner : Mr.A.Chidambaram

For Respondents : Mr.G.Prem Anand Rao

ORDER

The petitioner has filed this petition to set aside the impugned order dated 27.09.2023 and made in E.A.No.5090 of 2018 in E.P.No.1600 of 2016

on the file of the learned X Assistant Judge, City Civil Court, Chennai.

<https://www.mhc.tn.gov.in/judis>



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2. Heard, Mr.A.Chidambaram, learned counsel for the petitioner and Mr.G.Prem Anand Rao, learned counsel for the respondents and perused the materials available on record.

3. Before the executing Court the decree holder has filed an application under Order XXI Rule 35 of CPC, prays to order delivery of possession of the immovable property B portion of the Schedule mentioned property. Thereafter, the 1st Judgment debtor has filed an E.A.No.5090 of 2018 in E.P.No.1600 of 2016, before the X Assistant Judge, City Civil Court, Chennai, under Section 47 of CPC to declare that the Execution petition in E.P.No.1600 of 2016 is in executable and the same was dismissed by the learned trial Judge on 27.09.2023. Aggrieved the same the revision petitioner has preferred this Civil Revision Petition.

4. The learned counsel for the revision petitioner submitted that the suit property is a very small property, having frontage of only 25 ft and as per the final decree, the learned trial Judge has granted half share of the suit property in favour of the Decree Holder, which is an extent of 633.41 sq.ft. marked as “B” in the plan of Advocate Commissioner report. It is pertinent to note that both the sharer have been given only 12.10 ½ ft. frontage. The petitioner was



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advised that though the decree have been passed by allotting half share to the Decree holder, the same cannot be effectively divided in the practical sense, since on division of the property half share would be measuring only 633.41 sq.ft and also having only 12.10 ½ ft. frontage and as such cannot be conveniently enjoyed by any party and no building can be constructed in such a small property as set back cannot be provided and consequently no building plan will be granted by the Corporation of Chennai.

5. The application was strongly objected by the Decree holder stating that as per the preliminary decree final decree was passed. To drag on the proceedings the application was filed by the Judgment Debtor, in an area measuring 633 sq.ft 1BHK portion can be constructed and necessary permission can also be provided by the Corporation of Chennai and hence prayed to dismiss the application.

6. Considering both side submissions the Executing Court held that the suit property is 1255 sq.ft. Having frontage 25 ft. but as per the Commissioner's Report at B – Schedule portion as an extent of 633 Sq.ft was allotted to decree holder along with measurement and a major portion can be put up construction. As per the Commissioner's report and the deposition of



P.W.2 the learned trial Judge dismissed the E.A. Aggrieved which the revision has been preferred by the revision petitioner.

7. The learned counsel for the revision petitioner / JD 1 submitted that the allotment of the property as per the final decree only 12 ft. of frontage was allotted in which convenient enjoyment can not be made for which he relied upon the judgment of the Court of Andhra Pradesh, Hyderabad, ***in the case of “Kancherila Ram Mohan Vs. Mogal Ahmed Baig” reported in 1997 SCC online AP 504: (1997) 5 ALD 616 : (1997) 3 AP LJ (SN) 31: (1997) 5 ALT 85***, which reads as follows:

6. The lower Court has also chosen to dismiss the petition filed by the petitioner on the ground that the Advocate Commissioner, who visited the suit site, did not make any observation that the property is incapable of partition and that on the other hand, he divided the property into three shares and allotted 2/3rd share to the respondent and the remaining 1/3rd share to the petitioner and that in view of such circumstances, it cannot be said that the decree is incapable of execution, nor can it be said that the property is not suitable for partition. It is no doubt true that the Advocate Commissioner chose to divide the property into three shares and allotted 2/3rd share to the respondent and the remaining 1/3rd share to the petitioner and prepared the



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plan showing such separate allotments. But it is to be seen that the entire suit site consists only of an extent of 60' North-South and 15' East-West and the haveli along with one bath room water tap etc., are situated in the said site. It is also an admitted fact that the main door of the house is facing towards south. If it is to be partitioned North to South, an extent of 5' East to West and 60' North to South will fall towards the share of the petitioner and if a partition wall is to be constructed between the two portions, the extent will be further reduced. Such a small extent containing a strip of land measuring about 4 ½' East to West, will not be suitable or convenient for living purpose. If the

8. But coming to the facts of the case, Originally suit O.S.No.5790 of 1986 was filed by the Decree holder and to pass preliminary decree of half share of the Schedule mentioned property. As per the decree and Judgement dated 16.04.1992, Preliminary Decree was passed by allotting half share in the suit property. Against the passing of Preliminary Decree, the JD has preferred an appeal in A.S.No.24 of 2004 and the same was dismissed on 08.10.2004 by confirming the Preliminary Decree passed on 16.04.1992. Thereafter, against the first appeal, the JD has preferred Second Appeal in A.S.No.153 of 2005 and the same was also dismissed by this Court on 04.04.2012 by confirming the judgment and decree of the First Appellate



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Court and the trial Court. Based on the Preliminary Decree, the Decree holder namely Rajamanickam had filed I.A.No.17394 of 1993 for passing of final decree on the basis of Preliminary Decree and for allotment of half share in the suit property. In the final decree application I.A.17394 of 1993, as per the order in I.A.No.3834 of 1995 Advocate Commissioner was appointed to divide and demarcate the suit property into half share by metes and bounds. The Commissioner has filed the report, based on the report of the Advocate Commissioner, the Final decree was passed on 01.04.2014.

9. Now the plaintiff has taken steps to agree the possession of the property. At this stage 1st Judgement Debtor has filed an application stating that the decree cannot be executed for the reason that allotment of 12 ft in the frontage cannot be used as convenience. But on seeing the conduct of the revision petitioner clearly indicated that he wants to drag on the proceedings he filed the application. From the year 1986 onwards the plaintiff approached the Court, accordingly an extent of 633 sq.ft was allotted to the plaintiff and also to the defendant. The Engineer report - Ex.P2 clearly reveals that the property can be enjoyed conveniently as per the plan of the Commissioner's report. Both the parties are enjoying their shares, therefore, the reason assigned by the Judgement debtor is total vexatious one. To drag on the final



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decree proceedings, the revision petitioner filling such applications was rightly dismissed by the learned trial Judge, which need no interference by this Court. The authority relied by the revision petitioner / Judgment Debtor is not applicable to the facts of the case.

10. However, the learned trial Judge is directed to dispose of the case within a period of four weeks from the date of receipt of a copy of this order. Since the suit has begun in the year of 1996, if any application is filed before the Executing Court, without causing interference to the delivery of the possession, the same may be disposed of by the learned trial Judge.

11. Accordingly, Civil Revision Petition is dismissed as devoid of merits. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

27.11.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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T.V.THAMILSELVI, J.

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To

1. The X Assistant Judge, City Civil Court, Chennai.
2. The Section Officer,
VR-Section, High Court of Madras.

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and C.M.P.No.26814 of 2023

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