



C.R.P.(MD).No.142 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	10.08.2023
Pronounced on	21.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.142 of 2022

and

C.M.P.(MD) No.618 of 2022

Ramasamy

...Petitioner

Versus

1. Senathipathy

2. Gunasekaran

... Respondents

Prayer: The Civil Revision Petition is filed under Article 142 of Constitution of India to set aside the Order and Decretal Order dated 03.12.2021 passed in E.A.No.46 of 2021 in E.P.No.68 of 2009 on the file of the Learned District Munsif Court at Ottanchathiram.

For Petitioner : Mr.S.R.Rajagopa

Senior Counsel

for Mr.N.Kumar

For Respondents : Mr.M.O.Thevan Kumar



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ORDER

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This revision petition is preferred against the order dated 03.12.2021 made in E.A.No.46 of 2021 in E.P.No.68 of 2009 on the file of the learned District Munsif, Ottanchathiram.

2. According to the revision petitioner, the revision petitioner has filed E.A.No.46 of 2021 to stay all further proceedings in E.P.No.68 of 2009 pending disposal of the review petitions in C.M.P.(MD)No.2945 and 2946 of 2021 as against the judgment passed in S.A(MD).No.768 of 2009 and S.A.(MD).No.1034 of 2009 dated 14.06.2019 and E.A.No.47 of 2021 to issue subpoena and examine the Village Administrative Officer, Firka Surveyor and the Inspector of Police to speak about the delivery effected on 10.11.2021. However, the trial Court erred in dismissing E.A.No.46 of 2021 and has not passed any orders in E.A.No.47 of 2021.

3.The learned counsel appearing for the revision petitioner would submit that the order passed in E.A.No.46 of 2021 in E.P.No.68 of 2009 is based on no evidence and contrary to the evidence available on record. He



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would submit that the trial Court failed to see that in the plaint Schedule in O.S.No.114 of 2004, the property mentioned as an extent of 5.40 acres on the southern side out of a the total extent of 8.59 acres and there are no specific boundaries mentioned in the plaint. He would further submit that respondents/plaintiffs in O.S.271 of 2008 failed to approach the Court with clear pleadings and since the description of the property in the above suit is vague, the trial Court ought to have allowed the application filed in E.A.No. 46 of 2021 to stay all further proceedings and E.A.No.47 of 2021 to issue subpoena and examine the Village Administrative Officer, Firka Surveyor and the Inspector of Police to speak about the delivery effected on 10.11.2021. Hence, the order passed by the Execution Court is liable to be set aside.

4. On the other hand, the learned counsel appearing for the respondents would submit that the petitioner, as plaintiff, filed a suit in O.S.No.338 of 1983 on the file of the District Munsif Court, Palani for declaration of title and for permanent injunction in respect of the present suit property. The above suit was decreed on 22.08.1994, against which, the petitioner preferred an appeal in A.S.No.40 of 1996 before the Subordinate



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Court, Palani and the same was also decreed on 31.12.2002. In the Appeal Suit, it was observed that the suit property is in possession of the respondents herein and directed the respondents to institute a separate proceedings to establish their right in the suit property.

5. Accordingly, the respondents have filed the suit in O.S.No.114 of 2003 before the District Munsif Court, Palani, which was transferred to the District Munsif Court, Ottanchathiram and renumbered as O.S.No.271 of 2008. The above suit was decreed on 13.11.2008 in favour of the respondents herein. The petitioner herein has preferred A.S.No.3 of 2009 and the same was also dismissed on 03.08.2009. The Second Appeal preferred by the petitioner was also dismissed on 04.06.2019 by confirming the judgment and decree of the first appellate Court. Consequently, the petitioner has to hand over possession of the suit property to the respondents herein within a period of two months. The respondents herein, therefore, filed E.P.No.68 of 2009 for recovery of possession, in which, the petitioner herein filed the proof affidavit on 25.09.2019. The Executing Court, on 22.09.2021, ordered for delivery of property. Accordingly, the Court Amin with the help of the Surveyor and Police, delivered the property to the



respondents herein. Therefore, the petitioner herein filed E.A.No.46 of 2021 for stay of all further proceedings and E.A.No.47 of 2021 with false allegations to issue subpoena and examine Village Administrative Officer, Firka Surveyor and the Inspector of Police to speak about the delivery effected on 10.11.2021. The said application E.A.No.46 of 2021 was filed with an intention not to record the delivery, which is an administrative act of the Court. Hence, the trial Court has rightly dismissed the said application which calls for no interference.

6. Heard the learned counsel on both sides and perused the materials on record.

7. The petitioner/defendant in the above suit filed E.A.No.46 of 2021 to stay the execution proceedings until disposal of the review application filed by the petitioner/defendant. In this case, it is not in dispute that the respondents/plaintiffs filed E.P.No.68 of 2009 for the execution of decree passed in O.S.No.271 of 2008. In the said execution proceedings, the respondents/plaintiffs filed E.A.No.36 of 2021 and E.A.No.37 of 2021 for Police aid and identifying property with the help of Village Administrative Officer and Firka Surveyor. The above applications were allowed. The



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Amin filed a report stating that the delivery was effected On 15.11.2021.

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8. While so, the petitioner herein has filed E.A.No.46 of 2021 on 17.11.2021 for staying the execution proceedings until disposal of the review application filed in C.M.P(MD).No.2946 of 2021. The suit is filed in the year 2009 and the right of the respondents/plaintiffs in the suit property was confirmed by the trial Court and by this Court. Moreover, the contention of the petitioner that the description of property is not specifically stated in the plaint cannot be accepted at this stage after effecting the delivery of the property in favour of the respondents/plaintiffs. The said contention was raised only in E.A.No.46 of 2021, and never raised at the time of the trial of the suit. It is understood that the intention of the petitioner/respondent is to prevent the recording of the delivery. Hence, the Executing Court has rightly dismissed the applications filed by the petitioner which calls for any interference. The order of the trial Court is confirmed.

9. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected civil miscellaneous petition is also closed.



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Index:Yes/No

Speaking Order : Yes/No

To

The District Munsif Court, Ottanchathiram.



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER made in

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and

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