



C.R.P.(PD)(MD).No.1214 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.05.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.1214 of 2023

and

C.M.P(MD) No.5861 of 2023

1. Arulmani

2. Koilraj

... Petitioners / Petitioners/
Claimants/Petitioners

-vs-

1. Murugesan

.... 1st Respondent/1st Respondent/
Petitioner/Plaintiff

2. Selvinkanagaraj

.... 2nd Respondent/2nd Respondent/
Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the returned docket order dated 03.11.2022 passed in unnumbered E.A.No..... 2022 in E.P.No.30 of 2021 in O.S.No. 110 of 2013 on the file of the Principal Sub Court, Ambasamudram.

For Petitioners : Mr.C.Vakeeswaran



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ORDER

The present civil revision petition has been filed challenging the order of return passed by the Principal Sub Court, Ambasamudram, refusing to number the claim petition filed by the revision petitioners.

2. According to the revision petitioners, the first respondent herein had filed O.S.No.110 of 2013 on the file of Principal Sub Court, Ambasamudram, for the relief of specific performance. The said suit was decreed as against the second respondent herein.

3. According to the learned counsel for the petitioners, the claim petitioners are brothers of the defendants/judgment debtors in the suit and each one of the claim petitioners are claiming 1/3rd share in the suit schedule properties. On the said ground that they have filed an execution application claiming 2/3 share over the properties, that were subject matter of the specific performance suit. The said application was filed on 09.09.2022.



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4. The learned Subordinate Judge has returned the same on the ground that no title deeds have been enclosed along with the claim petition to establish the title of the claim petitioners. The said return was answered by the claim petitioners that the properties being ancestral in nature, they could only produce the revenue records to establish their share over the properties. However, finally on 03.11.2022, the Execution Application was returned on the ground that the execution proceedings have already been closed. The said order is under challenge in the present Revision Petition.

5. It could be seen from the records that the claim petitioners have filed the Execution Application on 09.09.2022. The sale deed has been executed by the Court only on 03.11.2022 and the Execution Application has been closed on 03.11.2022. Thereafter, the decree-holder has filed an E.A.No.5 of 2022 for taking delivery, which is still pending. Therefore, there is no legal impediment for the Execution Court in entertaining the claim petition provided all the records relating to the title of their properties are filed. Therefore, the return order passed by the Execution Court on 03.11.2022 is hereby set aside. The learned Subordinate Judge, Ambasamudram is directed



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to number the claim petition provided the revenue records indicating the title/ ancestral nature of the property are filed along with the claim petition.

6. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

04.05.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi/akv

Note: Issue order copy on 04.05.2023

To
1. The Principal Sub Court,
Ambasamudram.



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R.VIJAYAKUMAR,J.

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