



C.R.P.(MD).No.1728 of 2015 (NPD)

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).(NPD).No.1728 of 2015

and

MP(MD).No.1 of 2015

1.Ammukkutty (died)

2.Vimala

3.Lakshmi Kutty

4.Kamaleswaran

5.Ambily

6.Vimala

7.Shibu

8.Sadasivan

9.Monikantan

... Petitioners

(Petitioners 8 and 9 are brought on records as legal heirs of the deceased 1st petitioner vide Court order dated 22.11.2021)

-VS-

1.Delphin Morais

2.Joseph John Morais

3.Joseph Godwin Morais

4.Mary Preetha Morais

5.Pramila Morais

6.Mary Layala Morais

... Respondents



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PRAYER: The Civil Revision Petition has been filed under Section 115 of Civil Procedure Court, to set aside the order and decretal order passed in E.P.No.2 of 2006 in O.S.No.449 of 1980 dated 08.07.2015 on the file of the Principal District Munsif, Kuzhithurai and allow the Civil Revision Petition.

For Petitioners	: Mr.K.N.Thambi For M/s.K.Sreekumaran Nair
For R1, R2, R4 to R6	: No appearance
For R3	: M/s.J.Anandhavalli

ORDER

The present revision petition has been filed by the defendants/judgement debtors in O.S.No.40 of 1962 which is renumbered as O.S.No.449 of 1980 on the file of the Principal District Munsif Court, Kuzhithurai for the relief of declaration of title over 'A' schedule property and for recovery of possession over 'B' schedule property after demolishing the house in 'B' schedule property.

2.The suit was decreed by the trial Court. Challenging the same, the defendants had filed A.S.No.91 of 2002 on the file of the Subordinate Court, Kuzhithurai. The First Appellate court was pleased to dismiss the



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appeal on 17.09.2004. Thereafter, the plaintiffs/ decree holders had filed E.P.No.2 of 2006 to execute the decree of recovery of possession after demolishing the building in 'B' schedule property.

3.The defendants strongly contested the said execution proceedings on the ground that there are no buildings in the 'B' schedule property and hence, the decree holders have no right to demolish any building in the suit survey numbers. They have further contended that the decree holders have to first identify and locate their property of 7 ½ cents through Advocate Commissioner and only thereafter, proceed to recover the possession of 'B' schedule property. However, the Executing Court did not accept the defence of the Judgement Debtors and proceeded to pass an order of delivery on the ground that when there are no buildings in the 'B' schedule property, the Judgement Debtors cannot be put to any prejudice. This order is under challenge in the present Civil Revision Petition.

4.According to the learned counsel for the revision petitioners, the total extent of 2.77 acres is spread over in five survey numbers namely 2582, 2584, 2586, 2588 and 2596. Out of the said 2.77 acres, the plaintiffs claimed title only to an extent of 7 cents and 500 links. Out of the said 7 cents and 500 links, 'B' schedule property is having an extent of only ½



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cents with a building/shed in it. According to the learned counsel for the revision petitioners, 7 cents and 500 links have to be identified and located within 2.77 acres and thereafter ½ cents have to be located. Under the guise of attempting to demolish an alleged building in the 'B' schedule property, the decree holders are attempting to demolish buildings belonging to the defendants in the adjacent plots. Therefore, unless the property is identified and located, the decree cannot be executed.

5.Per contra, the learned counsel appearing for the respondent had contended that the trial Court as well as the Appellate Court have gone into the issue of location and identify of the property and only thereafter, a decree has been granted. At the execution stage, the judgement debtors cannot raise the said issue for the second time. In case, if there is no building in the 'B' schedule property, the judgment debtors will not be aggrieved by the order of delivery.

6.I have considered the submissions made on either side and perused the material records.

7.Any dispute relating to the identify or location of the property should be raised by the defendants during trial. If it had been raised and rejected, the same cannot be raised during the execution proceedings. If it had not



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been raised, the same cannot be raised in the execution proceedings.

Therefore, the contention of the judgment debtors that the lie and location of 'A' and 'B' schedule properties have to be first ascertained before executing the decree is not legally sustainable.

8.As rightly pointed out by the Executing Court, in case, if there are no building at all in the 'B' schedule property, the judgement debtors will not be put to any prejudice by executing the order of delivery. It is needless to point out that the decree for recovery of possession has to be executed strictly in accordance with decree. Therefore, this Court does not find any merit in the revision petition. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.09.2023

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

msa



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To

- 1.The Principal District Munsif, Kuzhithurai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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