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C.R.P(MD).No.2287 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.04.2023

Pronounced on : 07.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).No.2287 of 2019

and

C.M.P(MD)No.11948 of 2019

1.Rathinam

2.Ravichandran

3.Dharmendran

4.Vijayan

5.Iyyappan

6.Sugavasi Kavitha

...Petitioners

Vs.

Periyasamy

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records relating to the fair and decreetal order of delivery passed by the District Munsif Court, Keeranoor in E.A.No.16 of 2019 in E.P.No.39 of 2018 in O.S.No.114 of 2006 dated 03.10.2019 and set aside the same.

For Petitioners : Mr.K.P.Narayanakumar

For Respondent : No Appearance



ORDER

This Civil Revision Petition is filed against the order dated 03.10.2019 passed in E.A.No.16 of 2019 in E.P.No.39 of 2018 in O.S.No. 114 of 2006 on the file of the District Munsif Court, Keeranoor.

2. The brief facts of the case:

The revision petitioners are the petitioners in E.A.No.16 of 2019 in E.P.No.39 of 2018 in O.S.No.114 of 2006 on the file of the District Munsif Court, Keeranoor. The main E.P.No.39 of 2018 in O.S.No.114 of 2006 is filed by the respondent for execution of decree. The revision petitioners filed their counter and the main EP is pending for enquiry. At this stage, the petitioners filed interlocutory petition in E.A.No.16 of 2019 to permit them to file a additional counter. The said petition was resisted by the respondent. After hearing both, the Trial Court has dismissed the petition in E.A.No.16 of 2019 in E.P.No.39 of 2018 in O.S.No.114 of 2006. Aggrieved by the order of the Trial Court, the petitioners moved this Court by way of this Civil Revision Petition.

3. Heard the petitioners side and perused the records in this Civil Revision Petition.



4. The learned counsel appearing for the petitioners has argued that the revision petitioners are the defendants in the original suit and the suit was decreed against the petitioners. Now the respondent has filed the main E.P.No.39 of 2018 for directing the revision petitioners to execute the sale deed in favour of the respondent. The petitioners filed a counter in the main E.P. At this stage, the petitioners came to know that the property in question was acquired by the land acquisition authority for the formation of four-way road and they want to file the additional counter stating the said facts. Once, the property was acquired by the Government, the petitioners could not execute the sale deed. The Trial court has not considered these aspects and dismissed the petition. Therefore, the revision petition may be allowed by setting aside the impugned order.

5. On hearing the petitioners and on perusal of records, it is clear that the petitioners are the defendants in O.S.No.114 of 2006, which was filed by the respondent/plaintiff for specific performance in respect of the suit property measuring 1 ½ cents in S.No.175/3A of Viralimalai village. The said suit was decreed. The appeal preferred against the decree was also dismissed. Thereafter, the respondent/plaintiff has filed E.P.No.39 of 2018 for directing the revision petitioners to execute the sale deed in



respect of the suit property. The petitioners has filed the counter. When the main E.P.No.39 of 2018 is pending for enquiry, the petitioners stated that they came to know that the property in suit survey number was acquired by the land acquisition authority for the formation of four-way road and they could not execute any sale deed and so, they want to elicit the facts by filing the additional counter. It is a settled principle of law that the Executing Court can only proceed to execute the decree and not go beyond the decree and the parties to the suit must obey the command of the decree, until the decree is set aside by the subsequent constitutional proceedings or by the Appellate Court. On perusal of records, it is clear that the decree for specific performance in O.S.No.114 of 2006 became final after the dismissal of A.S.No.59 of 2014. This was not disputed by the petitioners. The petitioners stated that on receipt of information received under RTI Act, they came to know that the suit survey number was acquired for the formation of four-way road. Admittedly the suit survey number has larger extent of property. The suit property is small extent i.e., 1 ½ cent. If so, whether the suit property is also acquired cannot be decided by the Executing Court. As stated supra, the Executing Court can only proceed to execute the decree and not go beyond the decree. Hence, the trial Court has correctly dismissed the petition in E.A.No.16 of 2019 in E.P.No.39 of 2018 in O.S.No.114 of



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2006 and passed the impugned order, which needs no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.

6. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

07.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd

To

- 1.The District Munsif Court,
Keeranoor.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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