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CRP No.698 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.698 of 2023

and

C.M.P.No.5495 of 2023

Thambanna Udayar (died)
Kamalam (died)
Sivakami (died)

1.Kannammal
2.Saraswathi
3.Arthanari
4.Sulochana
5.Govinthasamy
6.A.Manikandan
7.B.Gomathi

... Petitioners

Vs.

1.Pappathi
2.Mallika
3.Rajkumar
4.Premkumar

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Constitution of India to set aside the fair and decreetal order dated



CRP No.698 of 2023

30.01.2023 made in E.A.No.10 of 2022 in E.P.No.42 of 2000 in O.S.No.9 of 1981 passed by the learned Principal Sub Court, Tiruppur by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan
For Respondents : Mr.V.Ayyadurai, Senior Counsel
for Mr.V.Balamurugan

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 30.01.2023 made in E.A.No.10 of 2022 in E.P.No.42 of 2000 in O.S.No.9 of 1981 passed by the Principal Sub Court, Tiruppur.

2. The learned counsel for the petitioners submitted that the petitioners are the decree holders. They filed a suit against the Judgment Debtor in O.S.No.9 of 1981 for specific performance in respect of sale agreement dated 17.02.1975. The suit was decreed in favour of the petitioners on 16.02.1982. Aggrieved by the same, the respondents filed an appeal in A.S.No.353 of 1982 before the High Court, which was dismissed. Thereafter, the decree holders filed a petition in E.P.No.69 of 1995 and got a



CRP No.698 of 2023

sale deed dated 22.04.1998 by document No.2145/1998. Thereafter, the Decree Holder filed E.P.No.42 of 2000 for delivery of possession, in which, the respondents 1 to 4 filed E.A.No.10 of 2003 under Order 21 Rule 97 CPC., wherein without the knowledge and consent, the learned counsel appearing for the decree holders made an endorsement dated 08.10.2003, which reads as follows:-

“Without prejudice to the rights of the petitioner, the petitioner not pressed his claim relating to 2nd item of the petition mentioned property, namely vacant site compromised in S.No.494/816. Hence, the said property may be excluded from delivery proceedings.”

Thereafter, the E.P., was transferred to Sub Court, Tiruppur on 25.06.2004.

The E.P., was assigned new E.P.,number.

3. The learned Judge, based upon the endorsement of decree holders' counsel, made the following order on 16.09.2004:-



CRP No.698 of 2023

“Petitioner has made an endorsement that he is not claiming delivery of the 2nd item of the property i.e., vacant site and the petition regards to the 2nd item of vacant site in T.S.No.494/8/6 is excluded”

Though the learned Judge ordered for delivery of Item No.1 of schedule property, in pursuance of delivery warrant, the petitioners got delivery of two items of the property. Since the E.A.No.9 of 2022 filed by the respondents 1 to 4, the petition was allowed and redelivery was ordered with regard to second item of the suit schedule property i.e., vacant land in T.S.No.494/8/6. Against the impugned order in E.A.No.9 of 2022, the petitioner filed C.M.A.No.11 of 2023, before the District Judge, Tiruppur, notice has been sent with regard to decide the title over the second schedule property i.e., T.S.No.494/8/6 (S.F.No.228 of Tiruppur Village). The learned counsel for the Decree Holder made an endorsement on 08.10.2003, in pursuance of endorsement, the order made by the learned Judge on 16.09.2004 is now challenged on the ground that the petitioners got decree of two items of property and the Court has issued warrant for delivery of two



CRP No.698 of 2023

items. Since they have made an endorsement, the petition is filed. Hence he wants to set aside the endorsement and the order made by the learned Judge on 16.09.2004.

4. The learned counsel for the respondents contended that the respondents 1 to 4 are not the parties to O.S.No.9 of 1981 and also not a party to the alleged sale agreement. The respondents 1 to 4 are the legal representatives of K.Raju, who died on 30.07.1993. After his death, they have entitled to get the title over the property. Further contended that they are in exclusive possession and enjoyment of the suit property. They have no knowledge about the suit in O.S.No.9 of 1981 and no knowledge about the decree passed in the above suit. Only when the amina came to take over the property, they came to the knowledge. Therefore, they have filed objected application. There was an order in favour of the respondents and now the petitioners filed C.M.A., which is pending. There is no reason to set aside the order passed by the Court on 16.09.2004. There is no merit in the petition. Therefore, the learned counsel seeks dismissal of the petition.



CRP No.698 of 2023

WEB COPY

5. On perusal of the proceedings of the Court, it is noticed that initially E.P., was filed before the Munsif Court, Tiruppur. While E.P., pending before the Munsif Court, Tiruppur, the learned counsel for the petitioners made an endorsement on 08.10.2003 and thereafter, E.P., was transferred to Sub Court, Tiruppur and renumbered on 25.06.2004. On 16.09.2004, the learned Judge conducted enquiry, after having heard the petitioner's arguments, passed the order, in pursuance of endorsement dated 08.10.2003, delivery ordered for first item of the property mentioned in the petition in T.S.No.495/8/6 bearing door Nos.12, 13, 14 & 15. With regard to second item i.e., vacant site T.S.No.494/8/6 was dismissed and ordered for delivery on 27.10.2004.

6. On perusal of the records, it reveals that in pursuance of the order dated 16.09.2004, delivery warrant was not issued. On 20.12.2019, delivery warrant issued and same was executed. In these circumstances, the order passed on 16.09.2004 is based upon the endorsement made by the petitioners' counsel on 08.09.2003. Since the learned counsel for the



CRP No.698 of 2023

WEB COPY

petitioner not pressed the second item of the property in T.S.No.494/8/6, they have delivered the order of first item. Hence, the order is passed based upon the endorsement alone. Therefore, I find no illegality in the order. Further with regard to the second item of the property, the right claimed by the rival parties has to be adjudicated in C.M.A.

7. In theses circumstances, I find no ground to set aside the order passed on 16.09.2004 and there is no merit in the revision petition. Hence, this Civil Revision Petition is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

28.02.2024

Index: Yes/No
Internet: Yes/No
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To
The Principal Sub Court, Tiruppur.

7 of 8



WEB COPY



CRP No.698 of 2023

V.SIVAGNANAM, J.

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CRP No.698 of 2023

28.02.2024