



CRP.No.2142 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2142 of 2019
and
CMP.No.13805 of 2019

M.Gopal

... Petitioner

Vs.

1.M.Manikandan

N.Madhavan (Deceased)
M.Kamalakaran (Deceased)
M.Raghuraman (Deceased)

2.M.Venkatraman

M.Vijayaragharan (Deceased)
M.Lakshmi (Deceased)

3.K.Dhanalakshmi

4.K.Anand

5.K.Chitra

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and final order dated 11.06.2019 made in



CRP.No.2142 of 2019

E.P.No.1901 of 2012 in OS.No.7479 of 1994 on the file of the IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.D.Padmanabhan

For Respondents : Mrs.B.N.Sivagama Sundari
for Mr.R.Balasubramanian for R1
R2- Died step due
R3 to R5 Batta due reg.

ORDER

Aggrieved by the order directing the delivery of property in execution, the judgment Debtor-3/third defendant has come by way of this Revision.

2. The first respondent filed a suit for recovery of possession against the petitioner and other respondents in respect of the property described in the plaint schedule with four boundaries. It was the case of the petitioner that the defendants executed a sale deed in favour of the plaintiff/first respondent herein on 27.04.1987 and the same was registered as Document No.859 of 1987 on the file of the Sub-Registrar, Mylapore. Subsequently, inspite of repeated requests, the judgment debtors/defendants



CRP.No.2142 of 2019

failed to hand over the physical possession of the property and hence, the first respondent was constrained to file a suit for recovery of possession.

3. The suit was decreed by this Court on 10.11.2008 and thereafter the first respondent filed an Execution Petition seeking delivery of the property described in the decree in E.P.No.1901 of 2012 on the file of the IX Assistant Judge, City Civil Court, Chennai. The said execution petition was resisted by the petitioner/3rd judgment debtor on the ground that though the extent of the suit property was mentioned as 1660 sq.ft in the plaint, the property available on the ground within four boundaries mentioned in the plaint is 1870 sq.ft as found by the Advocate Commissioner. Therefore, without demarcating the correct extent, the first respondent is not entitled to take possession of the entire property covered by the four boundaries. Not satisfied with the objection raised by the petitioner herein, the Court below passed the order of delivery and aggrieved by the same, the petitioner is before this Court.

4. The decree for possession was passed in favour of the first



CRP.No.2142 of 2019

respondent in respect of the property covered by four boundaries. It is settled law, in case of any dispute with regard to the extent boundaries will prevail over the extent. Therefore, the points raised by the petitioner cannot be accepted. Further, the dispute with regard to the extent was not raised by the petitioner in his written statement. When he had an opportunity to raise the dispute with regard to the discrepancy in the extent he failed to raise the same in the written statement. In such circumstances, the petitioner is not entitled to raise the same points at the time of execution.

5. Accordingly, I do not see any reason to interfere with the orders passed by the Court below and hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation Case : Yes/No
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CRP.No.2142 of 2019

To

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CRP.No.2142 of 2019

S.SOUNTHAR, J.

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CRP.No.2142 of 2019
and
CMP.No.13805 of 2019

08.01.2024