



WEB COPY



C.R.P. (PD) .No.3368 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3368 of 2019
and C.M.P.No.21985 of 2019

Sekar @ Jeganathan

.. Petitioner

Vs.

1.Dhanalatchoumy

2.Vanaja

3.Santha @ Rajambal

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 13.02.2019 made in T.O.P.No.79 of 2017 on the file of the learned Principal District Judge, Puducherry.

For Petitioner : Mr.Thiagarajan.R

For R1 : Died

For RR 2 & 3 : No appearance



ORDER

WEB COPY

This civil revision petition arises against the order passed in T.O.P.No.79 of 2017, dated 13.02.2019, on the file of the learned Principal District Judge, Puducherry.

2.The civil revision petitioner is the petitioner in T.O.P.No.79 of 2017. He wanted the learned Principal District Judge to transfer E.P.No.87 of 2013 in O.S.No.209 of 2009, including E.A.No.22 of 2017 in E.P.No.87 of 2013, from the file of the I Additional District Munsif, Puducherry, to the II Additional District Judge, Puducherry, to try along with the suit in O.S.No.95 of 2017.

3.It was the case of the civil revision petitioner before the learned Principal District Judge that the 1st respondent herein had filed suit in O.S.No.209 of 2009, seeking for declaration and recovery of possession against the 2nd respondent herein. He pleaded that the 1st respondent obtained a collusive compromise decree on 30.04.2012 and on the strength of which the 1st respondent filed E.P.No.87 of 2013. The learned I Additional District Munsif at Puducherry had ordered delivery of the property and to report the



same on 31.07.2015.

WEB COPY

4.The civil revision petitioner, who claims to be in possession of the property, stated that on 31.07.2015, he went along with his family members to Tirupathi on a pilgrimage. At that time, the 1st respondent, along with a Court Amin, came to the property and took delivery of the same. On coming to know of the fact that his property had been taken delivery of pursuant to E.P.No.87 of 2013 in O.S.No.209 of 2009, he filed two applications. One, not to record the delivery and other in E.A.No.22 of 2017, requesting the Court to record his obstruction of the decree. The said applications were pending on the date on which he moves the T.O.P. In the meantime, the 1st respondent presented O.S.No.95 of 2017 seeking for partition and separate possession. The civil revision petitioner wanted this partition suit to be tried along with the execution proceedings. Hence, he filed T.O.P.No.79 of 2017.

5.The learned Principal District Judge, Puducherry, found that the suit properties are different and so are the parties. Hence, he dismissed the Transfer Original Petition. Aggrieved by the same, this revision is before the Court.



WEB COPY

6.I heard Mr.Thiagarajan.R for the civil revision petitioner.

7.Mr.Thiagarajan.R, reiterated the contentions that had been placed by his counter part before the learned Principal District Judge, Puducherry. In addition, he pointed out that E.P.No.87 of 2013 itself had been dismissed for default on 21.11.2022.

8.I have carefully considered the submissions of Mr.Thiagarajan.R.

9.For the purpose of transfer, the issues involved in both the proceedings should be one and the same. Even if there is a commonality of the parties, but if the issues are different, a Court would not normally order transfer. The issue involved in E.A.No.22 of 2017 in E.P.No.87 of 2013 in O.S.No.209 of 2009, is whether the civil revision petitioner is entitled to obstruct the decree. The issue involved in O.S.No.95 of 2017 is whether the plaintiff therein [the 1st respondent herein] is entitled for a share in the property. There is absolutely no commonality in the issues.



10. An Additional District Munsif in the proceeding under Order XXI Rule 97 of the Code of Civil Procedure, 1908, cannot grant preliminary decree for partition and the learned II Additional District Judge while dealing with O.S.No.95 of 2017, cannot hold that the decree in O.S.No.209 of 2009 is inexecutable. Therefore, if the T.O.P is ordered, it will lead to embarrassment of the proceedings.

11. In the light of the above discussion, I do not find any necessity to take a different view than that has been taken by the learned Principal District Judge, Puducherry, in T.O.P.No.79 of 2017 dated 13.02.2019. Accordingly, this Civil Revision Petition is dismissed. The learned II Additional District Judge at Puducherry, is requested to expedite the proceedings in O.S.No.95 of 2017. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.11.2024

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



WEB COPY



C.R.P. (PD) .No.3368 of 2019

V.LAKSHMINARAYANAN, J.

krk

To

- 1.The Principal District Court,
Puducherry.
- 2.The II Additional District Court,
Puducherry.

C.R.P.(PD).No.3368 of 2019

20.11.2024