



C.R.P.(PD).No.2533 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2533 of 2021

and

C.M.P.No18971 of 2021

1.Thiruvengadam Mudaliar

2.Parasuraman Mudaliar

3.Rangan

4.Rajendran

5.Jayalakshmi

... Petitioners

VS

Muniratnam Mudaliar

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Docket Order in R.E.P.No. 13 of 2008 in O.S.No.243 of 1996 on the file of the District Munsif Cum Judicial Magistrate Court, Denkanikottai dated 04.10.2021.



C.R.P.(PD).No.2533 of 2021

For Petitioners : Mr.Avinash Wadhwani
for M/s.V.Srimathi

For Respondent : Mr.P.Mani

ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court ordering delivery with police help.

2. The respondent herein obtained a decree for recovery of possession against the petitioner/judgement debtor and he filed execution petition in R.E.P.No.13 of 2008 and the same is unfortunately pending for the past 16 years.

3. The learned counsel appearing for the petitioners by taking this Court to the report of the Bailiff dated 01.10.2021 submitted that the Bailiff in his report clearly noted that the door number of the house was smudged and four boundaries of the suit property were found correct only in two directions namely West and North. When Bailiff found that four boundaries of the suit property not tallying with the boundaries on ground in respect of the East and South, the Court below ought not to have ordered delivery of the suit



C.R.P.(PD).No.2533 of 2021

property. The learned counsel further submitted that in C.R.P.(NPD).No.3410 of 2018, this Court directed survey of the suit property by the Bailiff and in the absence of proper identification of the suit property, the impugned order passed by the Executing Court ordering delivery is not sustainable.

4. The learned counsel appearing for the respondent submitted that there is no order by this Court directing survey of the suit property in C.R.P.(NPD).No.3410 of 2018. The learned counsel further submitted that as per the order in the earlier civil revision petition, Senior Bailiff of the Court visited the suit property and identified the same. The learned counsel further submitted that Bailiff in his report dated 01.10.2021 pointed out the petitioners and other third parties obstructed delivery of the property illegally and hence, the Court below rightly ordered delivery of the property with police help and consequently, there is nothing on record to interfere with the order.

5. A perusal of the Bailiff's report dated 01.10.2021 would suggest that when he visited the suit property along with the Village Administrative



C.R.P.(PD).No.2533 of 2021

Officer, the same was identified. The Bailiff noted that door number of the superstructure found in suit property was smudged and the front portion of the superstructure found dilapidated. He also noted the four boundaries given in the decree matched only with the Western and Northern side of the suit property on ground. The Eastern and Southern boundaries found on ground differ with the boundary description in the decree. He further mentioned in his report that when he attempted to open the lock found in the door of the suit property and deliver the same to the respondent, the petitioners and others present there obstructed delivery. Therefore, he sought for police protection and also help of Village Panchayat Clerk for identification of the door number.

6. It is settled law the suit property should be properly identified before effecting delivery. In the case on hand, Bailiff noted boundaries of the suit property on two directions namely East and South not tallying with the boundaries available on ground. In this regard, the learned counsel appearing for the respondent/decreed holder submitted that there is a collusion between the Bailiff and the petitioners and therefore, the decree for recovery of



C.R.P.(PD).No.2533 of 2021

possession remained unexecuted for the past 16 years. In fact, this Court in earlier order passed in C.R.P.(NPD).No.3410 of 2018 noted complaint made by the respondent against the Senior Bailiff of the Executing Court. In such circumstances, in order to avoid controversy, the Court below is directed to appoint an Advocate Commissioner to accompany the Bailiff at the time of effecting delivery and he must identify the suit property with the help of Village Administrative Officer and Panchayat Clerk. It is also made clear that in view of the obstructions noted by the Bailiff in his report, the order passed by the Court below granting police aid for the purpose of effecting delivery is confirmed. Therefore, the Court below is directed to appoint a Senior Member of the Bar having more than 20 years of standing as Advocate Commissioner. He shall accompany the Bailiff at the time of effecting delivery and the suit property shall be identified properly with the help of Village Administrative Officer and Panchayat Clerk.

7. The Court below is also directed to pass necessary orders for police protection at the time of effecting delivery. The process of effecting delivery



C.R.P.(PD).No.2533 of 2021

shall be completed within a period of six weeks from the date of receipt of

copy of this order.

8. With these directions, the Civil Revision Petition stands disposed of.

No costs. Consequently, the connected civil miscellaneous petition is closed.

05.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



C.R.P.(PD).No.2533 of 2021

To

WEB COPY
The District Munsif Cum Judicial Magistrate Court,
Denkanikottai.



WEB COPY



C.R.P.(PD).No.2533 of 2021

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.2533 of 2021

05.02.2024