



C.R.P.[NPD].No.4589 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

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Lakshmanan [died]

1. L.Sivabagyam
2. L.Narayanan
3. L.Chinnathambi
4. L.Raju
5. Pappathi

. . Petitioners

Versus

1. Balachandran
2. Rukmani

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the fair and decretal Order in R.E.P.11 of 2005 in O.S.157 of 2003 dated 10.04.2024 on the file of the Subordinate Judge, Mettur.

For petitioner : Ms.D.Vasanthi



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ORDER

Challenging the Order of the executing Court dismissing the execution petition filed in REP.No.11 of 2005 in O.S.No.157 of 2003, the present revision has been filed.

2. Brief background of the case is follows :

The revision petitioner originally filed a suit for specific performance in O.S.No.157 of 2003 as against the respondents on the basis of the agreement dated 09.04.2003. The suit has been decreed in favour of the petitioner. It is relevant to note that this agreement has been executed by one of the co-owner of the entire property, pending the suit filed by other co-owners for partition and separate possession in O.S.No.400 of 1998. The suit in O.S.No.400 of 1998 has also been decreed and the rights of the parties have been determined pursuant to which a final decree has been passed in I.A.No.329 of 2005. However, the petitioner continued with his execution petition in E.P.No.11 of 2005 in O.S.No.157 of 2003. Thereafter,



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the plaintiff in O.S.No.400 of 1998 in whose favour the preliminary decree has been passed filed an application under Order XXI Rule 11 of Code of Civil Procedure. The said application has been allowed. Thereafter, it appears that the execution petition has been filed in O.S.No.157 of 2003 and the same has been dismissed, since, the rights have already been decided in application filed under Order XXI Rule 11 of Code Civil Procedure. Challenging the said finding, the present revision petition has been filed.

3. Heard the learned counsel appearing for the petitioner.

4. At the outset, a perusal of the records, this Court is of the view that this revision petition is not maintainable for the simple reason that the petitioner claims to have been purchased the property from one of the co-owners against whom he has obtained a decree in O.S.No.157 of 2003. It is to be noted that the agreement has been executed by the co-owner for the entire property, particularly, when a comprehensive suit for partition is already pending in O.S.No.400 of 1998 and that suit has been decreed



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declaring that all the co-owners each are entitled to 1/4th share. Thereafter, it appears that the final decree proceedings also concluded in I.A.No.329 of 2005 on 05.09.2021. In the said final decree proceedings, the present execution petitioners are also parties and they are arrayed as respondents 6 to 10. The execution Court while passing the final decree allotted the portion shown in green colour in the rough sketch namely the portion shows as D1 in the surveyor map, to the revision petitioners, since the above share fell to one of the co-owner, who entered into an agreement with the revision petitioners. The final decree has already been passed allotting one portion of the property in favour of the revision petitioners. While passing the final decree, the trial Court has also held that the parties are entitled for their respective shares on payment of requisite Court Fee and deposit of Non Judicial Stamp papers within a period of two months from the date of the final decree.

5. As the rights of the parties have already been determined in the



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final decree, the petitioners having stepped into the shoes of their vendor and their vendor share has been determined and allotted to the revision petitioners, it is for the revision petitioners to seek possession as per the final decree passed in I.A.No.329 of 2005 in O.S.No.400 of 1998. It is to be noted that petitioners shall also ensure that necessary court fee is paid and necessary Non Judicial Stamp Papers have been deposited as directed by the trial Court. As the rights of the parties have already been determined, the petitioner now cannot proceed in the execution proceedings to enforce the specific performance for the entire property. In such view of the matter, I do not find any merits in this revision petition. Liberty is given to the petitioners to pay necessary Court fee and deposit the Non Judicial Stamp Papers as directed by the trial Court and file a separate Execution Proceedings for delivery of possession of the property allotted to them in the final decree proceedings.

6. With the above observations, this Civil Revision Petition is



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dismissed. No costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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VTC

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