



C.R.P.No.4991 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4991 of 2023
and CMP.No.29146 of 2023

1.Vinoth
2.N.Purushothamaraju ... Petitioners

Vs

1.D.Krishnama Naidu
Salammal (deceased)
2.Valliammal
3.Thulasi
4.M.Nagaraj
M.Prasad (deceased) ... Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair order and decretal order dated 25.07.2023 passed in E.P.No.1 of 2018 in O.S.No.69 of 2007 on the file of I Additional District Judge at Tiruvallur and pass such further orders as this Court may deem fit in the circumstances of the case.



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For Petitioners : Mr.T.Sundar Rajan

For Respondents : Mr.Y.Jyothish Chander for R1

ORDER

This civil revision petition arises against the order of the I Additional District Judge, Tiruvallur in E.P.No.1 of 2018 in O.S.No.69/2007, dated 25.07.2023.

2. O.S.No.69 of 2007 is a suit for specific performance of an agreement of sale dated 14.08.2006 entered into between the plaintiff and the defendants 1 to 3. The first respondent herein is the plaintiff, and the other respondents namely Salammal, Valliyammal, Thulasi, Nagaraj and Prasad are arrayed as defendants 1 to 5 in the suit, of whom, pending the execution petition, first and the fifth defendants died. The revision petitioners are the legal heirs of the deceased fifth defendant, Prasad. The suit was decreed by the learned Principal District Judge, Tiruvallur, in and by way of a judgment dated 29.04.2008.



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3. Aggrieved by the same, the second defendant alone preferred an appeal before this Court in A.S.No.12 of 2009. Amongst the several points urged by her before this Court, the principal one was that the second defendant was the exclusive owner of the suit property, which runs to an extent of 3.13 acres, out of which, an extent of 25 cents had been alienated to one Peethambara Raja by way of a registered document dated 19.04.2004. As a portion of the property had already been alienated to Peethambara Raja, she pleaded that the said property cannot be entirely sold to plaintiff as per the decree. Though the other points urged by the second defendant/appellant in A.S.No.12 of 2009 were not accepted by the Appellate Court, this point found acceptance and the appeal was partly allowed on 05.01.2012.

4. In terms of the Appellate Court decree dated 05.01.2012, with which the Trial Court decree merged, the following phrases/clauses had to be incorporated before executing the decree :

"1. That in clause (i) of the decree of Trial Court after the words "conveying the suit property" the following be substituted "Excluding the property described in exhibit B2".

2. That in clause (ii) of the decree of the Trial Court after the words "possession of Suit property" the following be added



"Excluding the property described in exhibit B2".

3. That the plaintiff be at liberty to file necessary application citing necessary parties under Section 28(3) of the Specific Relief Act, to get carved out of the area covered by clause (i) and clause (ii) of the decree of the Trial Court below as amended by clauses (i) and (ii) above.

4. That in other respects the decree of the court below do stand."

5. Pursuant to the modification of the trial Court decree, an application in I.A.No.10/2013 was moved before the trial Court by the plaintiff to amend the decree of the trial Court. The learned Principal District Judge had allowed the said application on 13.02.2015, and modified the decree of the trial Court, bringing it in terms of the Appellate Court decree in A.S.No.12 of 2009 dated 05.01.2012.

6. The decree of the trial Court in O.S.No.69 of 2007 having been modified and as the defendants are not executing the sale deed, the plaintiff/decreed holder was constrained to file E.P.No.1 of 2018. He had also presented a draft sale deed for the purpose of perusal of the Court. The schedule of the property shown in the draft sale deed is similar to the



schedule of property shown in the execution petition. Pending the execution proceedings, the fifth defendant had died and his legal heirs came to be impleaded as respondents 6 and 7. They as judgment debtors 6 and 7, filed a counter in E.P.No.1 of 2018, wherein they have pleaded that the property have to be demarcated by appointing an Advocate Commissioner, who shall identify the property and fix the boundary stones, and only thereafter, the sale deed can be executed in favour of the plaintiff.

7. The learned Judge did not accept the plea of the judgment debtors 6 and 7 in appointing an Advocate Commissioner, but she had accepted the draft sale deed produced by the plaintiff, and allowed the execution petition.

8. Challenging the said order in E.P.No.1/2018, the present revision is filed by the judgment debtors 6 and 7.

9. Heard Mr.T.Sundar Rajan for revision petitioners and Mr.Y.Jyothish Chander for first respondent/deed holder.



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10. A perusal of the decree under execution shows that it had been modified in terms of the Appellate Court decree in A.S.No.12 of 2009 dated 05.01.2012. The primary contention of the revision petitioners is that the property which had been sold to Peethambara Raja would have to be demarcated by appointing a Commissioner and then the sale deed had to be executed. This has already been done by the learned Principal District Judge on the Original Side. The learned Judge had modified the decree of the trial Court on 13.02.2015, thereby bringing the decree of the trial Court in accordance with the decree as granted by Appellate Court. Therefore, the decree holder is acting in compliance with the decree that he had obtained before this Court on 05.01.2012. The question of appointing an Advocate Commissioner to demarcate the property would arise if there is a confusion in the decree. By virtue of an order dated 13.02.2015 in I.A.No.10/2013, the decree of the Trial Court which originally stood to an extent of 3.13 acres has been restricted to 2.88 acres excluding the 25 cents already sold to Peethambara Raja.

11. To conclude, I do not find any error in the order of the I Additional District Judge, Tiruvallur in E.P.No.1 of 2018 in O.S.No.69/2007, dated



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25.07.2023, and the said order stands confirmed. The civil revision petition lacks merit and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.07.2024

Index:Yes/No

Neutral Citation : Yes / No

Speaking order / Non-speaking orders

To:

1.The Judge

I Additional District Judge
Tiruvallur.

2.The Section Officer,

VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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