



C.R.P(MD)No.1547 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1547 of 2013
and
M.P(MD)No.1 of 2013
and
C.M.P(MD)Nos.2675 to 2677 of 2024

1.J.M.Thompson

2.Panuvel

3.Looy Roobini

4.Sobitha Raj

5.Suraj Emmanuvel

6.Lalakumari

7.Prem Kumar

8.Rajakumar

9.Vino Kumar

... Petitioners

Vs.

1.K.M.Robert Samraj

1/7



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2.K.M.Sellvin Lal

3.K.M.Vijayakumar

4.M.C.Joylet Dawson (Died)

5.K.M.Jayachandra

6.Robertson Rajappan

7.Justin

8.Binny Dawson

9.Binita Caroline

... Respondents

(Respondents 8 and 9 are brought on record as legal heirs of the deceased fourth respondent vide Court order, dated 26.04.2023 made in C.M.P(MD)Nos.10640 to 10642 of 2017 in C.R.P(MD)No.1547 of 2013)

PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order, dated 13.08.2013 of the learned Principal District Munsif, Kuzhithurai made in E.A.No.84 of 2013 in E.P.No.104 of 2011 in O.S.No.403 of 1961 on his file, allowing the said E.A.

For Petitioners : Mr.K.N.Thampi

For R-1, R-2, R-3

& R-5 : Mr.S.C.Herold Singh



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For R-7 : No appearance

ORDER

The present revision petition has been filed by the judgment debtor in O.S.No.403 of 1961 on the file of the Principal District Munsif Court, Kuzhithurai. The said suit was filed for the relief of redemption of mortgage. A preliminary decree was passed. The plaintiff had filed I.A.No.631 of 1974 for passing of final decree. An Advocate Commissioner was appointed in the said final decree proceedings and he had filed a report and valued the improvements made by the defendant. The Trial Court after relying upon the said Commissioner's Report, passed a final decree, quantifying the improvement made by the defendant at Rs.7,000/-.

2. The judgment debtor had filed A.S.No.90 of 1995 challenging the quantum of improvements as fixed by the Trial Court. The First Appellate Court enhanced the quantum of improvements from Rs.7,000/- to Rs.15,000/-. Not being satisfied, the mortgagee in possession, had filed second appeals in S.A.Nos.352 and 353 of 2002 challenging the



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quantum of improvements. This Court by judgment and decree, dated 05.07.2011 had dismissed both the appeals with an observation that, the mortgagee has not proved the claim of his improvements by any acceptable evidence for improving the suit schedule property. This Court has also found that the judgment debtor has not placed any evidence to substantiate the value of the trees and the expenses incurred towards the improvements. Based upon the above said observations, this Court has proceeded to confirm the quantum relating to the value of the improvements made by the defendants in the above said second appeals.

3. The mortgagor / plaintiff had filed E.P.No.104 of 2011 for taking delivery of the property. In the said execution proceedings, the judgment debtor had filed E.A.No.84 of 2013 for appointment of an Advocate Commissioner to note down the value of the improvements made by the judgment debtor, who was in possession of the suit schedule property as a mortgagee. The said application has been dismissed. Challenging the same, the present revision petition has been filed.



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4. The trajectory of the events that are narrated above will clearly indicate that, the quantum relating to the value of improvements made by the mortgagee in possession has already attained finality in S.A.Nos.352 and 353 of 2002 by judgment and decree, dated 05.07.2011. Therefore, the question of again appointing an Advocate Commissioner to note down the value of the improvements made by the defendant in possession, does not arise in the execution proceedings.

5. In view of the above said facts, there are no merits in the Civil Revision Petition. Hence, this Civil Revision Petition stands dismissed. There shall be no order as to costs.

6. In view of the above said disposal of the Civil Revision Petition, C.M.P(MD)Nos.2675 to 2677 of 2024 stand closed. Consequently, M.P(MD)No.1 of 2013 stands closed.

23.04.2024



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Principal District Munsif,
Kuzhithurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.1547 of 2013

23.04.2024