



C.R.P.(PD) (MD).Nos.70 and 71 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)Nos.70 and 71 of 2018

and

C.M.P(MD) No.310 of 2018 in C.R.P(MD) No.70 of 2018

C.R.P(MD) No.70 of 2018:

Anthony samy

... Petitioner/Petitioner/
Petitioner/Plaintiff

-vs-

Ilayaperumal @ Vellapandi Nadar (Died)

... Since Deceased/ Judgment Debtor

1. Madasamy

2. Samuthiram

3. Ulaganathan

4. Muruganantham

5. Kalyani

6. Amirthakani Ammal (died)

... Respondents 1 to 6/
Respondents 2 to 7/
Respondents 2 to 7/
Defendants



C.R.P.(PD) (MD).Nos.70 and 71 of 2018

7. Suresh
8. Kani

... Proposed Respondents

(Respondents 7 and 8 are brought on record as legal heirs of the deceased 6th respondent vide order of this Court dated 21.06.2024 made in C.M.P. (MD) Nos.7368, 7369 and 7371 of 2024 in C.R.P(MD)No. 70 of 2018)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against the executable and fair order dated 22.09.2017 passed in E.A.No.377 of 2016 in unnumbered E.P.No..... of 2017 in O.S.No.225 of 1982 on the file of the learned Principal District Munsif, Ambasamudram.

For Petitioner : Mr.C.Dhanaseelan

For Respondents : Mr.R.J.Karthick
for R1 to R4, R7 and R8

: Died – R5 and R6

C.R.P(MD) No.71 of 2018:

Anthony samy

... Petitioner/Petitioner/
Plaintiff

-vs-

Ilayaperumal @ Vellapandi Nadar (Died)

... Since Deceased/ Judgment Debtor

1. Madasamy

2. Samuthiram



C.R.P.(PD) (MD).Nos.70 and 71 of 2018

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3. Ulaganathan

4. Muruganantham

5. Kalyani

6. Amirthakani Ammal (died)

... Respondents 1 to 6/

Respondents 2 to 7/

LRS of the deceased defendants

7. Suresh

8. Kani

... Proposed Respondents

(Respondents 7 and 8 are brought on record as legal heirs of the deceased 6th respondent vide order of this Court dated 21.06.2024 made in C.M.P. (MD) Nos.7375 to 7377 of 2024 in C.R.P(MD)No. 71 of 2018)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against the executable and fair order dated 22.09.2017 passed by rejecting execution petition in unnumbered E.P.No..... of 2017 in O.S.No.225 of 1982, on the file of the learned Principal District Munsif, Ambasamudram.

For Petitioner : Mr.C.Dhanaseelan

For Respondents : Mr.R.J.Karthick

for R7 and R8

: No appearance – R1 to R4

: Died – R5 and R6



C.R.P.(PD) (MD).Nos.70 and 71 of 2018

COMMON ORDER

The plaintiff in O.S.No.225 of 1982 is the revision petitioner in both the Revision Petitions. He had filed the above suit with a prayer for declaration of title and permanent injunction. The suit was decreed on 29.06.1988.

2. Alleging violation of the permanent injunction decree, the decree holder had filed Execution Petition under Order 21 Rule 32 of C.P.C, on 12.12.2016. Since the first defendant in the suit had already passed away, the decree holder had filed E.A.No.377 of 2016 to implead the legal heirs of the first defendant. The Executing Court had not only dismissed E.A.No.377 of 2016, but has proceeded to dismiss the Execution Petition itself without being numbered on 22.09.2017 by way of two independent orders. Challenging the same, the present Civil Revision Petitions have been filed by the decree holder.

3. A perusal of the orders impugned in the revision petitions indicates that the defendants in the suit have filed in O.S.No.1052 of 1987 before the



C.R.P.(PD) (MD).Nos.70 and 71 of 2018

District Munsif Court, Ambasamudram, and the said suit has been decreed on 26.04.1988. Alleging violation of the decree in O.S.No.1052 of 1987, the decree holders therein (defendants in the present suit) have filed E.P.No.142 of 1990 and the same is still pending.

4. A perusal of the orders impugned in the revision petitions reveals that the Executing Court is under the impression that the suit property in O.S.No.1052 of 1987 and O.S.No.225 of 1982 are one and the same. Unless, E.P.No.142 of 1990 was disposed of, finality cannot be reached. On the above said premise, the Executing Court has proceeded to dismiss the E.A.No.377 of 2016 and the unnumbered execution petition filed by the decree holders in O.S.No.225 of 1982.

5. This Court, by an order dated 21.03.2000 passed in C.R.P.No.3084 of 1996 in paragraph Nos. 8 to 12, has held as follows:

“8. I am unable to sustain the objection raised by the learned counsel for the respondent for the following reasons:

9. Firstly, the description of the property as given in the plaint schedule-2 in O.S.No.1052 of 1987 is totally different from the description of the property



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C.R.P.(PD) (MD).Nos.70 and 71 of 2018

given in O.S.No.225 of 1982.

10. *The entire dispute in O.S.No.1052 of 1987 relates to a common pathway which is situated on the south of Survey No.219 of total extent of two acres and ninety eight cents. But as far as the decree in O.S.No. 225 of 1982 is concerned, the total extent given is one acre and 50 cents in Survey No.219. A perusal of the description of the boundaries also shows that except for the western boundary being mentioned as Ambur Road, all the other boundaries are different and the names of the owners of the adjacent properties are completely different.*

11. *Therefore, I am unable to uphold the contention of the learned counsel for the respondent that the property in both suits are one and the same. Further, it is also not open to the respondent to contend otherwise than the findings rendered by Bellie, J. in C.R.P.No.2467 of 1992 or to ignore the same. The learned Judge after recording the submission of the counsel for the revision petitioner before him to the effect that both the properties are different, he had ultimately concluded that there was absolutely no reason as to how the decree passed in O.S.No.1052 of 1987 was incompetent as contended by him. The decree holder was permitted to pursue to E.P.142 of 1990.*



C.R.P.(PD) (MD).Nos.70 and 71 of 2018

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12. In these circumstances, it was not open to the learned District Munsif to hold that the properties are identical and one and the same and that the decree in O.S.No.225 of 1992 would prevail over the decree obtained by the revision petitioner.”

6. In view of the findings of this Court in C.R.P.No.3084 of 1996, it is clear that the suit property in O.S.No.225 of 1982 is completely different from the suit property in O.S.No.1052 of 1987. Therefore, the pendency of E.P.No. 142 of 1990 arising out of O.S.No.1052 of 1987 has no relevance whatsoever to decide the execution petition arising out of O.S.No.225 of 1982. Therefore, the findings of the Executing Court in both the impugned orders are not legally sustainable and they are liable to be set aside.

7. In view of the above said deliberations, the order in E.A.No.377 of 2016, dated 22.09.2017 is hereby set aside. The order passed in unnumbered E.P on 22.09.2017 is also set aside. The learned Principal District Munsif, Ambasamudram, is hereby directed to number the execution proceedings and pass orders on merits and in accordance with law.



C.R.P.(PD) (MD).Nos.70 and 71 of 2018

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8. Pending Revision petitions, it is brought to the notice of this Court that the fifth respondent in the revision petitions, namely, Kalyani, had passed away on 16.04.2024. The revision petitioner is at liberty to implead the legal heirs in the execution proceedings.

9. With the above said observations, both the Civil Revision Petitions stand disposed of. All the interim orders granted stand vacated. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

22.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Principal District Munsif,
Ambasamudram.



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C.R.P.(PD) (MD).Nos.70 and 71 of 2018

R.VIJAYAKUMAR,J.

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C.R.P.(PD)(MD)Nos.70 and 71 of 2018

22.07.2024



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C.R.P.(PD) (MD).Nos.70 and 71 of 2018