WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.R.P.(MD)No.1498 of 2017
and C.M.P.(MD).No.8032 of 2017

Ramalingam ... Petitioner

Vs.

1.M.P.Muruganantham
2.Lakshmi
3.Selva Palanivel
4.A.Paramasivan ... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair order and decreetal order dated 27.032017, made in E.A.No.58 of 2027 in E.A.No.250 of 2014 in E.A.No.105 of 2014 in E.P.No.291 of 2008 in O.S.No.491 of 2005 on the file of the Principal District Munsif Court, Tirunelveli by dismissing the same.

For Petitioner : Mr.S.P.Maharajan

For Respondents : Mr.V.Meenakshi Sundaram for R1, R2 & R4
No Appearance for R3

https://www.mhc.tn.gov.in/judis

WEB COPY

ORDER

This civil revision petition has been filed to set aside the fair order and decreetal order dated 27.032017, made in E.A.No.58 of 2027 in E.A.No.250 of 2014 in E.A.No.105 of 2014 in E.P.No.291 of 2008 in O.S.No.491 of 2005 on the file of the Principal District Munsif Court, Tirunelveli by dismissing the same.

2.The facts in brief:

Suit in O.S.No.491 of 2005 was filed by one Lakshmi through the second respondent herein against one Selva Palani Vel, who is the third respondent herein seeking the relief of recovery of sum of Rs.25,000/- with interest at the rate of 12% and for costs.

3.The defendant in the suit remained exparte. So exparte decree was passed on 22.06.2006. To execute the decree, E.P.No.291 of 2008 was filed by the Decree Holder to attach and sell the property mentioned in the petition for recovery of decree amount. E.A.No.105 of 2014 was filed seeking delivery of the property by the auction purchaser. Since the sale was confirmed, he was issued with sale certificate on 03.01.2011.

https://www.mhc.tn.gov.in/judis

WEB COPY

4.On 22.06.2014, E.A.No.250 of 2014 was filed by one Ramalingam, the revision petitioner herein under Order 21 Rule 97 CPC for declaration that the property absolutely belongs to him and for declaring that the order passed in the E.P.No.291 of 2008 is null and void and for setting aside the Court auction, etc.

5.That was resisted by the auction purchaser. When that was pending another E.A.No.58 of 2017 was taken up by one M.P.Muruganandham to implead himself as a party petitioner stating that the auction purchaser namely his father executed a settlement deed in his favour in document No.3355/2015. So he is a necessary party. That was resisted by the claimant and by the order dated 27.03.2017 the Execution Court allowed the petition. Against which this revision is preferred.

6.The counsel for the revision petitioner would submit that the right which the proposed party claims cannot be looked into in the claim application filed by him, if at all he is entitled, file a separate suit. Apart from that he also submitted that the description of property mentioned in

https://www.mhc.tn.gov.in/judis

WEB COPY

his settlement deed differ from that of the description of property mentioned in the sale certificate, execution petition, etc. That important factor was not taken into consideration by the execution Court.

7.Per contra, the learned counsel for the respondent would submit that in the claim application filed by the revision petitioner, he has stated that a house is available in the petition mentioned property and paying the house tax, EB bills, etc. Contra to this the learned counsel for the revision petitioner would submit that even as per the amin's return. It is stated that it is a vacant site. But, actually, a house and a deep bore Well is situated. So the description of property mentioned in the petition also differs. So according to the revision petitioner, the description of property does not tally. The revision petitioner has also produced the typed set of papers enclosing copy of the settlement deed dated 30.12.2002 and as well as the Encumbrance Certificate, wherein the description of property is mentioned as T.S.No.1229/2A3. But, whereas, in the execution petition the T.S.No.is mentioned as 1229/2A measuring about 3 cents in the middle of the total 6 cents. So the respondent would say that document does not relates to the suit property.

https://www.mhc.tn.gov.in/judis

WEB COPY

8.All these things can be looked into by the execution court. But the execution court has committed a mistake by adding the proposed party as the second petitioner in the obstruction petition filed by the revision petitioner. The proposed party cannot be impleaded as second petitioner. If at all, he can only be impleaded as respondent in the E.A.No.105 of 2014, so also in E.A.No.250 of 2014 is concerned he ought to have been added only as respondent. Now with the above said modification, this revision stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1.The Principal District Munsif, Tirunelveli.

2.The Section Officer, E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

https://www.mhc.tn.gov.in/judis

WEB COPY

G.ILANGOVAN,J.

TM

C.R.P.(MD)No.1498 of 2017

29.11.2024

https://www.mhc.tn.gov.in/judis