



C.R.P(NPD)(MD)No.2537 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.2537 of 2024

and C.M.P.(MD)No.14722 of 2024

1.Shanthi

2.Alex

... Petitioners

Vs

Kamalan Nadar (Died)

Emily (Died)

Suguna Bai (Died)

1.Jeyasekhar

2.Vijaya Mary

3.Jeyaseelan

4.K.P.Mohandhas

5.Hanna S.Mohan

6.Ludia S Mohan

Josuva (Died)

Muthamma Nadathi (Died)

Yesudhasan Nadar (Died)

1/10



C.R.P(NPD)(MD)No.2537 of 2024

Christhudhasan Nadar (Died)

Muthu Pillai (Died)

Deiva Pillai Nadar (Died)

7.Rosamma

Rasallayyan (Died)

Rethina Muthan (Died)

8.Gomay Grace

Chellamuthu Raj (Died)

9.Mohan Singh

Raja Singh (Died)

Jeya Singh (Died)

10.Prasanna Rani

11.Priya Rani

Shyam Chrishtu Kumar (Died)

12.Vijayakumar

13.Mary Poomathy

14.Ashok Kumar

15.Christhuraj

16.Asha Rani

17.Jeevarani

18.Darling

19.Janet Thankam

20.Sunil Thanakam

21.Sujitha Thanakam

22.Ajitha



C.R.P(NPD)(MD)No.2537 of 2024

23.Leela Bhai

24.Jegan Raj

25.Anjel Prema

... Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order in E.P.No.86 of 2002 in O.S.No.228 of 1966 passed by the Principal District Munsif, Kuzhithithurai, dated 03.06.2024.

For petitioners : Mr.A.Balakrishnan

For Respondents : Mr.M.R.Sreenivasan for R1 to R3
Mr.B.Arulmozhimaran for R4 to R6

ORDER

This Civil Revision Petition is filed against the fair and decreetal order in E.P.No.86 of 2002 in O.S.No.228 of 1966 passed by the Principal District Munsif, Kuzhithithurai, dated 03.06.2024.

2. The facts in brief:

Mortgage was created in respect of 'B' schedule property by one Yesuvadiyan Nadar, who is the father of the plaintiff in favour of one



C.R.P(NPD)(MD)No.2537 of 2024

Dharmayyan, Thaveethu and Joshuva in the year 1935. There was a partition in the family. By virtue of the partition, the suit 'B' schedule property was allotted to one Gnanathangam and 'A' schedule property was allotted to one Kamalan Nadar. Stating that the present suit 'A' schedule property is one among the 'A' schedule property mentioned in the partition deed and second wife's children attempt to trespass into 'A' schedule property, a suit was filed in O.S.No.228 of 1966 seeking for declaration and injunction in respect of 'A' schedule property and for redemption of 'B' schedule property. Thereafter, preliminary decree was passed on 12.03.1977. Final decree application was filed in I.A.No.562 of 1988. Final decree was passed on 27.11.1995. Execution petition was filed in E.P.No.86 of 2002. After that various problems arose, which will discuss later.

3. This Civil Revision Petition is directed against the order passed by the Execution Court dated 03.06.2024 in E.P.No.86 of 2002. By that order, delivery was ordered. Against which, this Civil Revision is preferred.



C.R.P(NPD)(MD)No.2537 of 2024

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4. The ground on which, the revision came to be filed and the objection made by the revision petitioners before the Execution Court is that the description of the property is not correct. The total area of 'A' schedule property is 2 acres 88 cents. But, as per the release deed in Ex.A2, the plaint 'A' schedule property is measuring about 3 acres 12 cents. But, in Ex.A3, the schedule property is mentioned as 3 acres 95 cents. Therefore, the description of the 'A' schedule property is not correct. 'B' schedule property, which is subject matter of the mortgage was not properly identified. The decree provides for delivery of half share in 'B' schedule property. So, without identifying the total extent in 'A' schedule property, delivery could not be effected and execution has failed to take notice of the same. After the death of the first defendant, his right over the 'B' schedule property devolved upon defendants 7 to 9. Later 7th defendant died. Therefore, the property devolved upon other legal heirs. They put up construction after obtaining proper permission. In respect of that portion, the decree holder has no right.



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5. At the time of hearing, a question was put to the learned counsel for the respondents as to whether 'B' schedule property was identified at any point of time, since the total extent in 'A' schedule property was stated differently in different documents. The learned counsel appearing for the respondents would submit that Commissioner was appointed and he has filed his report, wherein the property was properly identified. Copies was also made available to the Court, wherein, the mortgage property was noted as 'A B C D'. It is seen that the mortgaged property was identified even during the course of trial proceedings. In the written argument submitted by the revision petitioners, he has stated that the Advocate Commissioner's report itself is wrong. But, this is not the stage to take up the issue. It ought to have been taken during the course of trial. The document, which was marked during the trial process cannot be re-appreciated in the revision stage. Now it is too late for the revision petitioners to make objections that the suit properties were not properly identified either by the trial Court or by the Execution Court. This is the major objection made by the respondents.



C.R.P(NPD)(MD)No.2537 of 2024

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6. No doubt that the total extent in 'A' schedule property was differently stated in different document. But, the Execution Court cannot go behind the decree. After elaborate discussion and appreciation of evidence on record, the trial Court decreed the suit. The defendants, who were original parties have not taken up the matter in appeal. Therefore, the judgment and decree has become final. On technical ground it appears that the present objection is made by the revision petitioners. To clarify the issue in a proper manner, the respondents were directed to produce the copy of the subject mortgage deed. They produced the mortgage deed, wherein also it is found that the total extent of the suit property is mentioned as 3 acres 95 cents in S.No.3646. Four boundaries also mentioned with reference to the document, as mentioned above in the report of the Advocate Commissioner. Therefore, the contention raised by the revision petitioners, at the belated stage, cannot be taken into account at all. The Execution Court has made a thorough discussion even with regard to the title of the property. Therefore, this revision is liable to be dismissed.



C.R.P(NPD)(MD)No.2537 of 2024

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7. Accordingly, this Civil Revision Petition is dismissed. As directed by the Execution Court, delivery is ordered to be effected and EP may be closed at the earliest. Consequently, connected miscellaneous petition is closed. No costs.

29.01.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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C.R.P(NPD)(MD)No.2537 of 2024

To

- 1.The Principal District Munsif, Kuzhithithurai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P(NPD)(MD)No.2537 of 2024

G.ILANGO VAN, J.

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C.R.P(NPD)(MD)No.2537 of 2024

29.01.2025