



C.R..P.(NPD)(MD).No.868 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD)(MD)No.868 of 2024

and

C.M.P(MD) No.4830 of 2024

Varadharajan (Died)
Neelavathi (Died)

1. Jayapal

2. Jayakumar

3. Jayaseelan (died)

... Petitioners/Respondents/
Defendants

4. Rajalakshmi

5. Vijaysriram

6. Vijaysrinath

... Proposed petitioners

(Petitioners 4 to 6 are brought on record as LRs of the deceased 3rd petitioner vide order of this Court dated 10.01.2025 made in C.M.P(MD) Nos. 18706 to 18708 of 2024 in C.R.P(MD) No.868 of 2024)

Vs.

Narayanasamy Naidu (Died)

1/6



C.R..P.(NPD)(MD).No.868 of 2024

WEB COPY

1. Nathan

2. Rajagopal

3. Baskaran

4. Balagangadhara Thilagar

5. Manikandan

... Respondents/Petitioners/
Plaintiffs

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 08.01.2019 by the learned Principal District Munsif, Kumbakonam, made in E.P.No.50 of 2013 in O.S.No.606 of 1986.

For Petitioners : Mr.B.Anandan

For Respondents : Mr.H.Laxmi Shankar

ORDER

The judgment debtors in O.S.No.606 of 1986 on the file of the Principal District Munsif Court, Kumbakonam, are the revision petitioners herein.

2. The respondents herein have filed the above said suit for the relief of permanent injunction or in the alternative for a mandatory injunction and



C.R..P.(NPD)(MD).No.868 of 2024

WEB COPY

recovery of possession. The suit was decreed for the relief of recovery of possession and for mandatory injunction. The said suit was dismissed with regard to the prayer of permanent injunction. Armed with the said decree, the decree holders have filed in E.P.No.50 of 2013 to take delivery of the property. The Execution Court has passed an order on 08.01.2019 directing the delivery of the property by 31.01.2019. Challenging the said delivery order, the present Civil Revision Petition has been filed.

3. According to the learned counsel appearing for the revision petitioners, the suit has been decreed only for an extent of 13 cents. However, under the execution proceedings, the decree holders are attempting to take possession of 16 cents. Therefore, the order of delivery has to be set aside. This is the only ground raised in the present Civil Revision Petition.

4. Per contra, the learned counsel appearing for the respondents/decreed holders submits that the property that was shown as schedule of property in the suit has been shown in the execution petition also. Therefore, the judgment debtors cannot raise a plea that the property within the four boundaries is 16 cents and not 13 cents. Such a plea was not raised during



C.R..P.(NPD)(MD).No.868 of 2024

WEB COPY

trial. He further contended that the order of delivery was challenged in C.M.A.No.4 of 2019 before the Principal Sub Court, Kumbakonam, which was dismissed on 24.07.2023 on the ground that it is not maintainable.

5. Heard both sides and perused the material on records.

6. A perusal of the trial Court decree reveals that the plaintiffs have mentioned the survey number, door number, four boundaries and they have relied upon the rough sketch also. They have not mentioned any extent in the suit schedule property. The defendants having not raised any objection with regard to the extent of property within the said boundaries during trial. Therefore, they would not be entitled to raise the said plea in the execution proceedings. In fact, the description of the property is the same in the execution proceedings also. Therefore, such a ground is not legally sustainable and there are no merits in this Civil Revision Petition.



C.R..P.(NPD)(MD).No.868 of 2024

WEB COPY

7. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

18.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal District Munsif Court,
Kumbakonam.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.R..P.(NPD)(MD).No.868 of 2024

R.VIJAYAKUMAR,J.

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C.R.P(NPD)(MD)No.868 of 2024

18.02.2025