

IN THE COURT OF DISTRICT MUNSIF ARNI, THIRUVANNAMALAI DISTRICT.

PRESENT : Tmt.S.Indra Gandhi,

District Munsif, Arni.

Friday, the 5th day of January 2017

E.P.No.50/2015 in O.S.No.66/2004

1. K.P. Somasundaram

2. K.K. Perumalsamy Mudaliar

.. Petitioners/D.Hs./Plaintiffs

/vs/

1. K.P. Kalyanasundaram

2. Kannan

3. K.P. Shanmugasundaram

4. K.P. Kandasamy

5. Vasantha

6. Jagadeeswari

7. Malarkodi

8. Datchayani

9. S. Sankari

10. S. Dinesh Kumar

11. S. Deepalakshmi

12. S. Aswini.

.. Respondent/JDs./Defendants

This petition coming up for final hearing before me in the presence of Mr. A. Dhasthageer Advocate for the petitioners and of Mr. V. Arivazhagan, Advocate for the respondents, upon perusing the records, hearing both sides and having stood over for consideration till this day this Court passed the following :

ORDER

This is an Execution Petition under Order 21 Rule 11(a) of CPC for prays to delivery of the schedule mentioned of immovable property marked with the alphabets ABCD in blue colour in the plaint plan annexed to the decree to the 1st petitioner as per decree.

2. The averments of the petition in brief:

The respondents 1 & 2/J.Ds.1 & 2/Defendants 1 & 2 and order for of delivery of the immovable property mentioned in the schedule hereunder, marked with the alphabets ABCD in blue colour, in the plaint plan annexed to the decree, to the 1st petitioner/1st D.H./1st plaintiff under order 21 rule 35 (1) & (2) of C.P.C. and pass such other suitable order or orders as may be deemed fit and proper by this Hon'ble Court, in the circumstances of the case.

3. The averments in the counter filed by the respondent :

The petitioner is not maintainable in law and facts. The petitioner cannot claim order of delivery against the respondents. The suit filed by the petitioner in O.S.No.66/2004 is false. The advocate who appeared for the respondents informed them that he will take care of the affairs in the court and hence the respondents were not aware about the exparte decree. Further in the suit there was a compromise and both petitioner and respondents decided the matter to out of the court and hence the respondents have not taken any action against the exparte decree. The suit property survey number and the four boundaries mentioned in the petition is false. The respondents are intended to set aside the exparte decree passed against them. And hence the petition has to be dismissed.

4. Now the point for consideration is whether the decree can be executed or not?

5. Heard both sides. Records perused. The execution application has been filed to execute the decree passed in O.S.No.66/2004 dated 25.11.2014. The suit was filed in the year 2004 and the decree was passed in the year 2014. The respondents have utmost delayed the legal proceedings and now they have come forward with a counter stating that they are intended to take steps to set aside the exparte decree. The respondents have not submitted any details of interlocutory application for setting aside the exparte decree before this court. The executing court cannot go beyond the decree and hence the court is necessitated to order for delivery of the schedule mentioned property to the petitioner. Hence this application is allowed.

In the result, the petition is allowed Delivery by 04.02.2017. Batta in 3 days.

Dictated to the steno-typist, typed by her in Computer, printed, corrected and pronounced by me in open court this 5th day of January 2016.

Sd/-S. Indra Gandhi,
District Munsif,
Arni.

List of Documents & witnesses on both sides : - Nil -

Sd/-S. Indra Gandhi,
District Munsif,
Arni.