



C.R.P(MD)Nos.1014 and 1015 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)Nos.1014 and 1015 of 2023

and

C.M.P(MD)No.4767 of 2023

C.R.P(MD)No.1014 of 2023

A.Saraswathi

... Petitioner/Petitioner

Vs.

J.Muniyammal

...Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order passed in E.A.No.2 of 2023 in E.P.No.233 of 2019 in O.S.No.427/2016 dated 03.03.2023 on the file of the learned Additional District Munsif, Madurai Town, Madurai.

For Petitioner : Mr.C.M.Arumugam

For Respondent : Mr.T.R.Jeyapalam

C.R.P(MD)No.1014 of 2023

A.Saraswathi

... Petitioner/Petitioner

Vs.

J.Muniyammal

...Respondent/Respondent



C.R.P(MD)Nos.1014 and 1015 of 2023

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to call for the entire records pertaining to the Execution Application in E.A.No.3 of 2023 in E.P.No.233 of 2019 in O.S.No.427 of 2016 dated 03.03.2023 on the file of the learned Additional District Munsif, Madurai Town, Madurai and to set aside the same.

For Petitioner : Mr.C.M.Arumugam

For Respondent : Mr.T.R.Jeyapalam

COMMON ORDER

C.R.P(MD)No.1014 of 2023 has been filed against the order dated 03.03.2023 in E.A.No.2 of 2023. E.A.No.2 of 2023 has been filed by the petitioner under Order 26 Rule 9 of C.P.C for appointment of Advocate Commissioner to identify the property.

2. C.R.P(MD)No.1015 of 2023 has been filed against the order dated 03.03.2023 in E.A.No.3 of 2023. E.A.No.3 of 2023 has been filed by the petitioner under Order 21 Rule 97 of C.P.C.

3. The specific case of the petitioner is that though the respondent herein has secured favourable judgment and decree in O.S.No.427 of 2016 on 12.04.2019, the identity of the property, which is in possession



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of the petitioner herein is different from the identity of the property in O.S.No.427 of 2016, as decreed on 12.04.2019. It was submitted that the property in question belongs to Kamatchiamman Temple. The petitioner's father, namely, Alagarservai, who was in possession of the same had put up the super structure. It is submitted that the Trial Court committed an error in rejecting the obstruction petition filed by the petitioner under Order 21 Rule 97 of C.P.C.

4. Per contra, the learned counsel for the respondent/plaintiff (decree holder) submits that the present civil revision petitions are misconceived as no appeal is maintainable against the order passed under Order 21 Rule 98 of C.P.C. It is submitted that the order passed under Order 21 Rule 98 of C.P.C is decree within the meaning of Section 2 (2) of C.P.C and therefore, if at all the petitioner is aggrieved by such order, she has to invoke the jurisdiction of the appellate Court under Section 96 read with Order 41 of C.P.C. It is submitted that the appeal does not lie against the interim order passed under Order 43 of C.P.C., and therefore cannot be countenanced as submitted by the learned counsel for the petitioner.



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5. That apart, the learned counsel for the respondent has drawn attention to the decision of the learned Single Judge of this Court in the case of *Periaswamy Vs Anchalai Ammal and others* reported in (1997) **2 LW 621**, wherein, the Court held that the revision is not maintainable as an appeal will lie against the order passed under Order 21 Rule 103 of C.P.C.

6. By way of rejoinder, the learned counsel for the petitioner submitted that the petitioner has already given an undertaking before the execution Court that the petitioner will vacate the property, in case, the property is ultimately found to be the property, which was subject matter of O.S.No.427 of 2016.

7. The learned counsel for the respondent even otherwise submitted that the petitioner has merely filed docket order when indeed the respective E.A.s (E.A.Nos.2 and 3 of 2023) have been disposed of by a reasoned order. It is submitted that even on this count, the discretionary remedy under Section 115 of C.P.C ought not to be exercised. The learned counsel for the respondent further submitted that



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the schedule given in the application in E.A.Nos.2 and 3 of 2023 is not clear. It is submitted that the boundaries for 266 square feet of land has not been separately given in the respective E.A.s. (E.A.Nos.2 and 3 of 2023). Only the outer boundary has been described.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

9. The undertaking given by the petitioner before the execution Court as also before this Court stands reiterated and recorded. The respondent's husband, late Jegan Mohan, had originally filed O.S.No.60 of 1992 for injunction and for recovery of possession and that the suit came to be decreed on 30.04.1996. The said suit was filed against the defendants therein, namely, Nagalakshmi and Rajeswari, who are none other than the sisters of the petitioner. It appears that the defendants therein in O.S.No.60 of 1992 had also filed A.S.No.87 of 1996, which was also dismissed.

10. The case of the respondent is that the persons, who are in possession of the property, were thereafter allowed to continue in



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possession as permissible occupants. Thereafter, the respondent herein, after the death of her husband on 20.01.2014 instituted a fresh suit in O.S.No.427 of 2016, which came to be decreed on 12.04.2019. It is submitted that pursuant to the decree passed in O.S.No.427 of 2016 on 12.04.2019, E.P.No.233 of 2019 was filed by the respondent. It appears that the delivery was ordered. When the respondent proceeded to take delivery of the property, the petitioner herein filed obstruction petition under Order 21 Rule 97 of C.P.C., which has culminated in the impugned order.

11. The petitioner has disputed the identity of the property by stating that the two properties are located in two different survey numbers. According to the petitioner, the petitioner's property is situated in T.S.No.1488 (New T.S.No.225) bearing Door No.1A. According to the respondent, the details given in the schedule are not precise and contain the larger extent of the property without a proper description of the boundary for the property in possession of the petitioner herein. The boundaries in O.S.No.427 of 2016 and E.A.Nos.2 and 3 of 2023 in E.P.No.233 of 2019 read as under:



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CRP(MD)No.1014 of 2023	CRP(MD)No.1015 of 2023
மதுரை டவுன், சிம்மக்கல், பழைய வார்டு 7க்கு, புது வார்டு எண்.16 காமாட்சிபுரம் என்ற ஆதிநாராயணன் பிள்ளை அக்ரஹராம், பழைய சர்வே 260A-க்கு டவுன் சர்வே 1318ல் மொத்தச் சொத்தில் தென்புறம் பாகம் கிழமேல் வடபுரம், தென்புரம் ஜாதியடி 21, தென்வடல் கீழ்புரம் மேல்புரம் ஜாதியடி 33 உள்ள மொத்தச் சதுரடி 693 உள்ள மனையிடமும் அதில் கட்டியுள்ள டோர் நிர் 1 உள்ள மேற்கோப்பு உள்பட வகையறாவிற்கு நான்குமால் வடக்கே : மாயாண்டி வகையறா பாக சொத்து கிழக்கே : சர்வே எண் 1318ல் கட்டுப்பட்ட அழகு அம்மாள் மனைவீடு தெற்கே : கிழமேல் ரோடு மேற்கே : பாலுச்சாமி என்ற முத்திருளப்பசாமி வகையறா தோட்டம்	மதுரை டி, மதுரை வடக்கு ரிடி, மதுரை வடக்கு இணைசார்பதிவகம், மதுரை டவுன், சிம்மக்கல், மதுரை மாநகராட்சி சர்வே வார்டு 7, பிளாக் 12, பழைய T.S.No.1488 புது T.S.No.225 பழைய கதவு எண் 1A, புதிய கதவு எண்.40/1-ல் கட்டுப்பட்ட கெட்டிக் கட்டிட வீடும் அதில் உள்ள நிலை, கதவு ஜன்னல், மின் இணைப்பு, குழாய் இணைப்பு, பாதாள சாக்கடை இணைப்பு உள்பட சமஸ்தமும் உள்ள வீட்டிற்கு நான்குமால் வடக்கு : அனுப்பானடி வாய்க்கால் தெற்கு : T.S.No.250 மதுரை மாநகராட்சி தெரு கிழக்கு : சோமுசெட்டியார் மனைவி கைப்பூரவள்ளியம்மாள் இடம் மேற்கு : காமாட்சியம்மன் கோவில்

12. *Prima facie*, it appears that the civil revision petitions itself are misconceived as the petitioner has an alternate remedy by way of an appeal before the appellate Court for the order passed under Order 21 Rule 98 of C.P.C. and therefore, the appeal has to be filed under Section



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97 of C.P.C.

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13. Be that as it may, considering the fact that an undertaking is given by the petitioner and considering the fact that the petitioner also concede that a property except the superstructure does not belong to her, there shall be a direction to the Additional District Munsif Court, Madurai to depute the Amin to visit the property as per the schedule to the plaint in O.S.No.427 of 2016 to take delivery of the same. In case, the property described in the schedule in E.A.Nos.2 and 3 of 2023 are within the larger extent of the schedule of property in O.S.No.427 of 2016, the petitioner shall deliver the property to the respondent. This exercise shall be carried out by the Additional District Munsif Court, Madurai within a period of 30 days from the date of receipt of copy of this order. The Court Amin shall take the assistance of the officials from the revenue department/officers from the Town Survey Department to identify the property.

14. The present Civil Revision Petitions stand disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2023

NCC : Yes / No
Index : Yes / No



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Internet : Yes / No
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To

- 1.The Additional District Munsif,
Madurai Town, Madurai
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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