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CRP (MD) No.1524 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	28.07.2023
Pronounced on	06.12.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.1524 of 2023
and
CMP (MD).No.7534 of 2023

Subbaiah Nadar

... Petitioner/Defendant

Vs

Ramalakshmi

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code seeking to set aside the order dated 31.03.2023 made in E.P.No.26 of 2019 on the file of the learned Principal Subordinate Judge, Tenkasi in O.S.No.328 of 2015 on its file and set aside the same as illegal by allowing this Civil Revision Petition.

For Petitioner : M/s.T.Indrachithu

For Respondent : Mr.Sankara Rama Subramanian



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ORDER

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This revision petition is preferred as against the order dated 31.03.2023 passed in E.P.No.26 of 2019 on the file of the learned Principal Subordinate Judge, Tenkasi in O.S.No.328 of 2015.

2. According to the revision petitioner, the revision petitioner had constructed a house in the land which is the subject matter in the suit in O.S.No.328 of 2015 which is in door No.59. However, the door number was wrongly mentioned as 14.11.4 in all the connected proceedings including the suit in O.S.No.328 of 2015 and E.P.No.26 of 2019. It is submitted that E.P.No.26 of 2019 was ordered based on the wrongful door number mentioned by the respondent/plaintiff in the plaint, though the correct door number of the revision petitioner is door number 59. Moreover, the Executing Court allowed the execution petition in E.P.No.26 of 2019 while the first appeal in A.S.No.20 of 2023 is pending before the learned Additional District Judge, Tenkasi for adjudication. Since the revision petitioner is in possession of the property from the year 1998 after purchasing the same from the respondent by way of unregistered sale deed, the revision petitioner has



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good case to succeed in the appeal. While so, the Executing Court erred in allowing the execution petition, moreover the revision petitioner is entitled to adverse possession in the suit property. Hence, the order passed by the learned Principal Sub Judge, Tenkasi, in E.P.No.26 of 2019 in O.S.No.328 of 2015 is liable to be set aside.

3.On the other hand, the learned counsel appearing for the respondent would submit that the suit in O.S.No.328 of 2015 was filed by the respondent/plaintiff for recovery of possession. It is submitted that on 22.02.1995 the Revenue Authorities assigned the suit property in favour of the respondent/plaintiff in which the plaintiff constructed a house and was residing there along with his family. The house tax was assessed in the name of the respondent/plaintiff. The husband of the respondent/plaintiff was a drunkard who left the family in the year 1998. At that time, the respondent/plaintiff's husband borrowed a sum of Rs.10,000/- from the defendant and since he was unable to repay the same, the petitioner/defendant was allowed to enjoy the suit property. At that time, the petitioner/defendant obtained the signatures of her husband in blank stamp papers, which were fabricated by the petitioner/defendant and the petitioner/defendant had also



taken the original patta from the respondent/plaintiff's husband. The petitioner/defendant attempted to transfer the patta in his name which was objected by the respondent/plaintiff on 03.09.2015. The respondent/Plaintiff caused the legal notice to the petitioner/defendant for which he had sent a reply notice with false allegations. Hence, the respondent/plaintiff was constrained to file the above suit for recovery of possession of the suit property. The suit was decreed in favour of the respondent/plaintiff and he filed E.P.No.26 of 2019 for execution of the decree. Mere filing of the appeal would not prevent the respondent/plaintiff in filing the execution petition to execute the decree passed in favour of the respondent/plaintiff. Hence, the civil revision petition is devoid of merits and is liable to be dismissed.

4.Heard on both sides and records perused.

5.The respondent/plaintiff has filed a suit in O.S.No.328 of 2015 for recovery of possession of the suit property. According to the respondent/plaintiff the suit property was assigned in her favour. The suit property originally belong to the Government and the same was assigned in her favour by the Government and patta was also issued in the name of the



plaintiff. The husband of the respondent/plaintiff borrowed a sum of Rs. 10,000/- from the petitioner/defendant and that time, the petitioner/defendant was allowed by the respondent/plaintiff's husband to enjoy the suit property and also the petitioner/defendant had taken the signature of the plaintiff's husband in blank stamp papers and the original patta from the plaintiff's husband. Thereafter, the petitioner/defendant attempted to transfer the patta in his name which was objected by the plaintiff and therefore, she was constrained to file the above suit for recovery of possession.

6.The trial Court after considering the material on record decreed the suit in favour of the plaintiff and ordered for recovery of possession directing the respondent to hand over possession of the suit property to the plaintiff. The plaintiff filed E.P.No.26 of 2019 for execution of the decree passed in her favour. Though the revision petitioner/defendant had submitted that he had preferred the first appeal against the decree and judgment passed by the trial Court, that alone would not prevent the respondent/plaintiff from filing an application before the Executing Court to execute the decree passed in favour of the respondent/plaintiff. However, the petitioner/defendant has sufficient opportunity to approach the appellate Court for staying the



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proceedings in the execution petition until disposal of the appeal suit.

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7. With the above observation, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2023

vsn

To

The Principal Subordinate Judge, Tenkasi



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K.GOVINDARAJAN THILAKAVADI

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