



C.R.P.(MD)No.1986 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1986 of 2019

and

C.M.P.(MD)No.10241 of 2019

Rajammal ... Petitioner / Petitioner (Claimant)/

3rd Party / 3rd Party

Vs.

1.Yesudasan ... 1st Respondent / 1st Respondent/
Petitioner (Decree holder)/Plaintiff

2.Anbalagan ... 2nd Respondent/2nd Respondent /
Respondent (Judgment Debtor)/ Defendant

Prayer: This Civil Revision Petition is filed 115 of the Civil Procedure Code, against the fair order and decretal order, dated 05.09.2019, made in E.A.No.80 of 2019, in E.P.No.64 of 2015, on the file of the Sub Court, Uthamapalayam, in O.S.No.84 of 2010, on the filed of the Sub Court, Padmanabhapuram.

For Petitioners : Mr.K.Guhan

For Respondents : Mr.C.Dhanaseelan for R1
: No appearance for R2



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ORDER

The instant Civil Revision Petition has been filed against the order, dated 05.09.2019, made in E.A.No.80 of 2019, in E.P.No.64 of 2015, on the file of the Sub Court, Uthamapalayam, in O.S.No.84 of 2010, on the file of the Sub Court, Padmanabhapuram.

2. The very Revision Petition has been filed by the third party, who is the mother of the judgment debtor, viz., one Anbalagan. It appears from the records that the plaintiff has filed the suit for recovery of money, before the Sub Court, Padmanabhapuram and obtained a decree on 03.02.2011. Subsequent to the decree, the sale was transmitted to the Uthamapalayam Sub Court and an execution application has been filed in E.P.No.64 of 2015, in respect of second item of property situated in S.F.Nos.1161, 1168/3, 1180 and 1181 of Uthamapuram village.

3. During the pendency of the said Execution Petition, the third party, viz., Rajammal, who is the mother of the judgment debtor and the second respondent / Anbalagan filed application under Order 21



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Rule 58 C.P.C raising a claim in respect of the Well and Pumpsets situated in S.F.No.1181. In order to understand the whole gamut of issue, this Court deems it appropriate to extract the relevant objection raised by the third party claim. The same is found a place in Para No.4 of the affidavit in E.A.No.80 of 2019. The same reads as follows:

“இந்நிலையில் கிளைம்தாரர் தன்கைவசம் சைத்து அனுபவித்து வருகின்ற மனுச் சொத்தானது உத்தமபுரம் கிராமம், சர்வே எண்.1181-ல் 1 ஏக்கர் 22 செண்டில் மேல்பக்கம் 98 செண்டிற்கு நெடுவேலி மணல்காடு வட்டத்தில் பழைய பட்டா எண். 530-க்கு புதிய பட்டா எண்.1768 ஆக உள்ளது. கிளைம்தாரருக்கு சொந்தமான மேற்படி மனுச்சொத்தில் தென்மேற்கு மூலையில் கிளைம்தாரரே தனது சொந்த செலவில் கிணறு அமைத்து, மின் இணைப்பு S.C.No.242 பெற்று அதில் 7 ½ HP மின்மோட்டார், பம்புசெட்டு மற்றும் உபகரணங்களை அமைத்து, கிளைம்தாரர் மட்டுமே தனித்து பாத்தியமாகி, அனுபவித்து வருகிறார்.”

At this juncture, the learned counsel for the decree holder / first respondent herein has fairly conceded the submission of the learned counsel for the petitioner, and would submit that they are only interested in the property situated in S.No.1180 to an extent of 74 cents and S.No.1181 of an extent of 24 cents and the total extent is 98 cents in Uthamapuram village, and the alleged Well and Pump sets connection in S.C.No.242 could be excluded from the description of



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property.

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4. The submissions made by the learned counsel for the decree holder / first respondent herein is recorded. In view of the above submission, this Court is of the firm view that the finding of the trial Court is liable to be interfered with. Hence, the claim in respect of the Well and Motor connection in S.C.No.242 is upheld and the same is ordered to be removed from the description of the property.

5. It is made clear that the item No.2 of the execution petition is only the land in S.F.No.1180 of an extent of 74 cents and in S.F.No. 1181 of an extent of 24 cents, totally of an extend of 98 cents in Uthapuram Village.

6. At this juncture, the learned counsel for the decree holder/ first respondent herein would submit that they conceded the submission only in respect of this E.P, and he may be given liberty to adjudicate in a suit separately instituted by the petitioner herein, in respect of the disputed claim of Well and the Motor connection.



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7. Considering the submissions made by the learned counsel for the decree holder, this Court gives liberty to the decree holder to adjudicate his right over the Well and Motor connection in a suit instituted by the petitioner herein in O.S.No.149 of 2019 on the file of the Sub Court, Uthamapalayam.

8. The instant Civil Revision Petition stands disposed of as indicated above. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

05.09.2023

NCC : Yes/No

Index :Yes/No

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To

1.The Sub Court,
Padmanabhapuram.

2.The Sub Court,
Uthamapalayam.

3.The Section Officer,
VR Section,



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Madurai Bench of Madras High Court,
Madurai.

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C.KUMARAPPAN.,J.

Ls

Order made in
C.R.P(MD)No.1986 of 2019

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