**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 10.07.2015**

**CORAM :**

**THE HONOURABLE MS.JUSTICE R.MALA**

**C.R.P(PD).No.1475 of 2015**
**and**
**M.P.No.1 of 2015**

V.Somasundaram ..Petitioner

/vs/

1.Mrs.F.Najma
rep. by her Power Agent S.Falzudheen

2.Renukadevi
3.UmaMakeshwaran
4.Padmaprakasam
5.Geetha Sundararajan ..Respondents

**Prayer:** Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the order of the Court of the Subordinate Judge, Pollachi dated 01.04.2015 passed in Unnumbered C.M.A.SR.No.2880/2015 against E.A.No.235 of 2014 in E.P.No/.35 of 2014 in O.S.No.364 of 2001 (DMC, Pollachi)

For Petitioner : Mr.N.Thiagarajan

For Respondents
R1 : Mr.T.Murugamanickam
R2 to R5 : Mr.C.V.Vijayakumar

**O R D E R**

Civil Revision Petition is filed against the order dated 01.04.2015 made in Unnumbered C.M.A.SR.No.2880/2015 by the learned Subordinate Judge, Pollachi against E.A.No.235 of 2014 in E.P.No.35 of 2014 in O.S.No.364 of 2001 on the file of the District Munsif Court, Pollachi.

2.The first respondent as a plaintiff filed a suit for recovery of possession against the respondents 2 to 5. Decree has been passed and that has been confirmed by the Apex Court. Execution Petition has been filed for delivery of possession and delivery has been ordered. At that time, the petitioner herein filed an application in E.A.No.219 of 2014 under Order 21 Rule 97 CPC for obstruction. Immediately, the first respondent/decree holder filed E.A.No.235 of 2014 for rejecting E.A.No.219 of 2014 as not maintainable. The Executing Court after hearing both sides allowed E.A.No.235 of 2014. Aggrieved against that, the petitioner herein preferred Civil Miscellaneous Appeal and that has been returned as follows:

> Returned Dt:01.04.2015
>
> 1.This appeal filed u/or 41 R 4 CPC Or.41 R.4 is applicable only either to the Plaintiffs or defendants in the suit proceedings. The present appeal neither plaintiff or defendant in the proceedings. Hence the appeal is returned as not maintainable.
>
> 2.How the appeal is maintainable in the orders

passed in the petition u/s. 151 of CPC, which is comprehensive order for the other two E.A.No.219/14 and E.A.No.220/14."

Against which, the present civil revision petition has been filed.

3.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

4.The learned counsel appearing for the petitioner submits that the Civil Miscellaneous Appeal is maintainable under Order 43 CPC. But the learned Subordnate Judge has not considered the fact. To substantiate his arguments, the learned counsel appearing for the petitioner relied upon the decision reported in ***2011 (2) CTC 149 (Thangeswari and two others vs. Thirumalvalavan and eight others)*** and ***2015 (1) CTC 516 (C.Murugan vs. Dr.Thilagavathy and another)***. Hence, he pray for setting aside the return of the Civil Miscellaneous Appeal and allow the civil revision petition.

5.Resisting the same, the learned counsel appearing for the respondents would submit that the revision itself is not maintainable because no final order has been passed. He further submitted that the appeal has been returned as to how appeal is maintainable. But the petitioner without re-presenting the same,

has filed the revision. So, the revision is not maintainable. He would also submit that the decisions relied upon the learned counsel appearing for the petitioner is not applicable to the facts of the present case.

6.Considered the rival submissions carefully made on both sides and perused the typed set of papers.

7.Admittedly, it is appropriate to consider whether the appeal will lie against that order. As per the decision reported in ***2011 (2) CTC 149 (Thangeswari and two others vs. Thirumalvalavan and eight others)*** and also another decision reported in ***2015 (1) CTC 516 (C.Murugan vs. Dr.Thilagavathy and another),*** wherein it was held that any application under Order 21 Rule 97 CPC has been dismissed or allowed, against which appeal alone is maintainable. There is no quarrel over the proposition. But the above citations are not applicable to the facts of the present case because it is not the case that on the dismissal of the application under Order 21 Rule 97 CPC, the petitioner herein preferred Civil Miscellaneous Appeal, which was not numbered. But here admittedly E.A.No.235 of 2015 has been allowed which was filed under Section 151 CPC and against which, appeal has been preferred. On perusal of Order 43, it is seen that there is no appeal provision if at all he is entitled to invoke Section 115 CPC for revision. Furthermore, it is pertinent to

note that final order has not been passed in the Civil Miscellaneous Appeal and it was only a return. Therefore, the petitioner has every right to re-present the same and substantiate his claim that the appeal is maintainable under Order 43 CPC and without doing so, the petitioner has rushed to this Court and filed a revision. So, I am of the view that the revision itself is not maintainable. Hence, I do not find any merits in the revision petition and the revision petition is hereby dismissed.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**10.07.2015**

Index:Yes/No
Internet:Yes/No

**Note:**
The Registry is directed to return the original papers to the learned counsel appearing for the petitioner within a period of one week from the date of receipt of a copy of this order

cse

To
The Subordinate Judge,
Pollachi.

**R.MALA, J.**

cse

**C.R.P.(PD) No.1475 of 2015**
**and**
**M.P.No.1 of 2015**

**10.07.2015**