

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) No.4336 of 2017
in C.M.P No. 20422 of 2017

Mahadeva Mudaliar

...Petitioner

Vs.

Bavacharya Satriya Seva Samajam
 Tirupattur rep. by its Secretary

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C, against the fair and decreetal order in E.P.No.34 of 2017 in RCOP No. 13 of 2011 dated 30.10.2017 on the file of Additional District Munsif Court, Tirupattur, Vellore District.

For Petitioner : Mr.PA.Sudesh Kumar
 For Respondent : Mr.V.V.Sathya

ORDER

Challenging the order of eviction passed in a petition filed under Order 21 Rules 35 and 36 of the Code of Civil Procedure, the revision petitioners are before this Court.

2. According to the revision petitioners, in the execution of a decree in eviction petition the schedule has been wrongly typed. Therefore, for want of correct description, the execution petition shall be dismissed as not maintainable.

3. The Executing Court has found that the decree of eviction putting the landlord in possession is the crux of the matter. In the absence of any contra evidence that there exists some other identical property or other properties under the possession of the judgment debtor are sought to be taken over in the guise of executing the decree, there can be no interference. But in the instant case, the Executing Court has found that there is no ambiguity as to the identity of the property. Only because of the word "செண்டு" typed as "கொண்ட" will not entitle the judgment debtor for continuation of possession. The decree holder is entitled to file a fresh execution petition so also to amend. That will not render the execution petition not maintainable. In so far as the order of eviction of the schedule mentioned property has become final, the judgment debtor / tenant cannot take shelter under spelling mistakes or typographical errors. The identity of the property, if wrong, delivery cannot be effected. The decree holder shall file a fresh application or amendment petition for the same. Therefore, the

Trial Court has rightly found that in order to avoid multiplicity of proceedings, the petition shall be dismissed.

4. This Court also is of the considered opinion that by the typographical error, the legal right of the judgment debtor is not affected. It is not a case that in the guise of a decree, some other property under the possession of the petitioner is sought to be taken away. In the instant case, there is only one petition premises in which the petitioner is a tenant and the respondent is a landlord. In such circumstances, execution of the decree in respect of the schedule mentioned property will not adversely affect the legal rights of the judgment debtor. The attempt of the revision petitioner is nothing but to protract the proceedings and abuse of process of law. Therefore, the Civil Revision Petition merits no consideration and is accordingly, dismissed. No costs. Consequently connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
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M.GOVINDARAJ, J.

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To

The Additional District Munsif Court,
Tirupattur,
Vellore District.



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