

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3737 of 2012
& M.P.No.1 of 2012

Vasanthha

.. Petitioner

Vs.

1.Uthirapathi
2.Suresh
3.Saravanan
4.Vijayalakshmi
5.Priya

6.Executive Officer
Arulmigu Thiagaraja Swamy Temple
Thiruvarur.

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 22.08.2012 made in E.A.No.unnumbered of 2012 in E.P.No.49 of 2011 in R.C.O.P.No.7 of 2005 on the file of the District Munsif Court, Thiruvarur.

For Petitioner : M/S.Swarnam J.Rajagopalan

For Respondents : Batta due

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 22.08.2012 made in E.A.No.unnumbered of 2012 in E.P.No.49 of 2011 in R.C.O.P.No.7 of 2005 on the file of the District Munsif Court, Thiruvarur.

2. The petitioner is the applicant and the respondents are the respondents in E.A.No.unnumbered of 2012. She filed the said application under Sections 47 and 151 of C.P.C. to declare the decree obtained by the first respondent as null and void and not binding on the petitioner on the ground that the order of eviction dated 28.06.2007 in R.C.O.P.No.7 of 2005 is not executable.

3. The facts of the case are as follows:

(i) The first respondent filed R.C.O.P.No.7 of 2005 on the file of the District Munsif Court, Thiruvarur, for eviction of one Thangaraj, husband of the petitioner herein on the ground of demolition and reconstruction. In the said R.C.O.P., eviction was ordered on 28.06.2007, challenging the same, the said Thangaraj filed R.C.A.No.6 of 2007 and the same was dismissed. Against the

same, the said Thangaraj filed C.R.P.No.3075 of 2008 before this Court and it was also dismissed.

(ii) First respondent filed E.P.No.49 of 2011 against the said Thangaraj to execute the order passed in R.C.O.P. Pending E.P., the said Thangaraj died. Petitioner and other legal heirs were brought on record in E.P.No.49 of 2011. The legal heirs of Thangaraj were impleaded as respondents in E.P.

(iii) According to the petitioner, first respondent is not owner of the property. The land in question belongs to sixth respondent temple and one Selvamani was the lessee on the said land. The petitioner purchased the said land from Selvamani, put up construction and she is residing there. The petitioner is not a tenant under the first respondent and first respondent is not the landlord. Thangaraj, husband of the petitioner has nothing to do with the petition premises. The petitioner did not know about the proceedings against her husband Thangaraj till she received notice in E.P.No.49 of 2011 and the said E.P. is not maintainable.

(iv) The decree is not executable, as it is not containing details of ward number, survey number, door number, block number and description of the property.

(v) The learned Judge dismissed the application holding that all the contentions raised by the petitioner now were not raised by her husband Thangaraj in earlier proceedings especially before this Court in C.R.P.No.3075 of 2008. The petitioner has not produced any record to substantiate her case and not made out any case.

4. Against the order dated 22.08.2012 made in E.A.No.unnumbered of 2012, the present civil revision petition is filed by the petitioner.

5. Heard the learned counsel for the petitioner and perused the materials on record.

6. According to the petitioner, she purchased lease hold right from one Selvamani and put up superstructure. First respondent is not owner of the petition premises. These contentions are without any merits. First respondent filed R.C.O.P.No.7 of 2005 for eviction of petitioner's husband Thangaraj. He contested the proceedings up to C.R.P.No.3075 of 2011 in this Court and lost at every stage.

7. The contention of the petitioner that she was not aware of the proceedings against her husband till she receives notice in E.P.

is unbelievable. It is not the case of the petitioner that she was not living with her husband till his death. Further, the petitioner has not produced any document to show that she purchased lease hold right from the said Selvamani and put up superstructure. The power under Section 47 of C.P.C. is very limited and the execution Court can dismiss the E.P. only when the party claimed that decree is not executable and is null and void. In the present case, the petitioner has not made out any case and has not proved that the decree obtained by the first respondent is not executable and null and void. In the circumstances, there is no illegality or irregularity in the order of the learned Judge dated 22.08.2012 warranting interference by this Court.

8. In the result, the Civil Revision Petition is dismissed. The E.P. is of the year 2011 and the learned Judge is directed to dispose E.P.No.49 of 2011 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

25.07.2017

Index : Yes/No
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V.M.VELUMANI, J.

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To

The District Munsif, Thiruvarur.



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