

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP(NPD).Nos.886 of 2018 & 995 of 2016

and

CMP.Nos.4850,7424 of 2018 & 6573, 5609 of 2016

Sekar

C/o. Kavitha Hotels
Kovai Road, Pollachi Taluk,
Coimbatore District.

..Petitioner/8th Defendant
in both petitions

Vs

1.Sethu Kandiappan
2.K.M.Yousuf

..Respondents/Plaintiffs
in both petitions

PRAYER IN CRP.No.886 of 2018: This Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decreetal order dated 13.02.2018 in E.A.No. 155 of 2017 in E.P.No. 94 of 2012 in O.S.No. 55 of 1982, passed by the learned District Munsif, Pollachi.

PRAYER IN CRP.No.995 of 2016: This Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decreetal order made in I.A.No. 4 of 2016 in E.P.No.94 of 2012 in O.S.No.55 of 1982 dated 15.02.2016 on the file of District Munsif, Pollachi, Coimbatore District.

For Petitioner : Mrs.Revathy
for M/s. Black N Red Law Associates
in both petitions

For Respondents : Mr.B.Ramamoorthy
in both petitions

COMMON ORDER

CRP.No.886 of 2018 arouse against the order in E.A.No. 155 of 2017 in E.P.No. 94 of 2012 in O.S.No. 55 of 1982, which is an application filed by the decree holders to direct the Court to pass orders on the request of the Court ameen to grant permission to demolish the dilapidated buildings in the portion allotted to the share of the decree holders and thereafter hand over vacant possession to the decree holders.

2 CRP.No.995 of 2016 arouse against the order passed in I.A.No. 4 of 2016 in E.P.No.94 of 2012 in O.S.No.55 of 1982, filed by the 8th defendant for appointing an advocate Commissioner to note down the physical features and submit a report.

3 The brief narration of the facts necessary for passing orders in the above Civil Revision Petitions are as follows:

In the final decree in I.A.No. 1863 of 2010 in O.S.No.62 of 1982, the Advocate Commissioner had submitted his final report, wherein he has stated that the entire property, which stretches from Marappan Street to Ansari Street, measures a total extent of 4530 sq.ft. He has partitioned the property into two equal halves measuring 2265 sq.ft each, the Southern portion faces Ansari Street

and Northern portion faces Marappan Street. The portion facing Marappan Street was allotted to the share of the plaintiff, Sethukandiappan and the portion facing Ansari Street was allotted to the share of the sisters namely Jegathambal, Yasodha, Meenachiammal. The revision petitioner is a tenant under the sisters and is running hotel in the said premises in the name and style of Sri.Kavatha. The Commissioners Report dated 16.11.2011 would state that the portion marked 1, that is the portion facing Marappan Street, consists of dilapidated buildings and a dilapidated wall.

4 It is seen that in the proceedings, several applications have been taken out back and forth and ultimately, when the ameen has visited the property, he returned the warrant stating that until he get orders from the Court to demolish the buildings, he will not be in a possession to hand over vacant possession to the decree holder. Therefore, the decree holders had filed E.A.No 155 of 2017 out of which, C.R.P.No. 886 of 2018 arisen, seeking direction to the ameen to demolish the construction. The said application was opposed by the respondent herein stating that in an earlier revision in Civil Revision Petition, this Court on the submission of the revision that they have no objection to hand over the vacant possession without causing damage to the building in which the revision petitioner was running the business, this Court had passed the

following order:

"7.In view of the same, the respondents/decreed holders are permitted to take possession of the vacant site i.e. Marked as No.1 in the plan which is located to the north of the hotel premises. It is made clear that while taking possession of the vacant site, no detriment shall be caused to the hotel buildings.

8.Post the CRP for final hearing on 03.06.2016."

5 The learned District Munsif, Pollachi, by order dated 13.02.2018 was pleased to allow the said application, permitting the ameen to demolish the buildings and hand over vacant possession to the decree holders, this is challenged by the eighth defendant stating that it is contrary to the orders passed by this in C.R.P.No. 995 of 2016, wherein, this Court had directed that the decree holders should be permitted to take possession of the vacant site without causing any detriment to the Hotel buildings. In the application filed by the eighth defendant for appointing an Advocate Commissioner, the learned District Munsif had dismissed the same stating that already the Commissioner had submitted the report and the suit has been pending since the year 1982 and the E.P has been pending for over 6 years. The said order is challenged by the revision petitioner/8th defendant.

6 Today, after making their submissions, the learned counsel for the petitioner is ready to hand over what ever is available within 2265 sq.ft abutting Marappan Street and which is marked 1 in the Commissioners Report.

7 Recording the same, this Court directs the learned District Munsif, Pollachi to reissue the warrant to the Advocate commissioner, who was already appointed to execute the above orders viz; measure the entire property and hand over the extent of 2265 sq.ft, immediately abutting Marappan Street to the decree holders. These Civil Revision Petitions will be kept pending till compliance of the order is reported to this Court, the learned Judge shall issue the warrant to the Commissioner within a week of receipt the production of the copy by either of the parties and the Commissioner shall complete the execution of the warrant and submit his report within a period of three weeks therefrom.

8 In the result, these Civil Revision Petitions are disposed of on the above lines. No costs. Consequently, connected miscellaneous petitions are also closed.

20.03.2019

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P.T.ASHA, J.
dua

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

To
The learned District Munsif,
Pollachi.



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