

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (NPD) NOS.2353, 2355 AND 2356 OF 2019
AND
CMP NO.15641 OF 2019

Matha

...

Petitioner
in all CRPs'

VS.

1.Rangarajan
2.Jayanthi

...

Respondent
nos. 1&2 in all CRPs'

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order of the Subordinate Court at Udthagamandalam, The Nilgiris District, dated 30.04.2019 passed in E.A.Nos.24, 26 and 25 of 2019 respectively, in E.A.No.74 of 2018 in E.P.No.51 of 2018 in O.S.No.236 of 2014.

For Petitioner
in all CRPs'

:

Mr.M.Saravanakumar

For Respondents
in all CRPs'

:

Mr.S.Elambharathi

COMMON ORDER

These Civil Revision Petitions are directed against the order of dismissal dated 30.04.2019.

2. The revision petitioner filed an obstruction petition under Order 21 Rule 97 of the Code of Civil Procedure. During pendency of the said petition, she filed three execution applications viz., E.A.Nos.74 of 2018, 24 of 2019 and 25 of 2019. She sought to reopen the execution petition, recall the first respondent and also for a direction to produce the case bundles in respect of O.S.No.236 of 2014 on the file of Subordinate Court, Nilgiris at Udthagamandalam. The petitioner would contend that the property originally belonged to her husband and he had gifted the property by a registered document dated 26.09.2011, whereas, the decree holder and judgment debtor collusively obtained a decree of specific performance and seek to take delivery of possession. Hence, she filed an obstruction petition and as stated above, the above three execution applications came to be filed.

3. I have considered the submissions made on either side and perused the materials available on record.

4. As per Order 21 Rule 97 of the Code of Civil Procedure, if a person claims right, title and interest in a property against which the possession is sought to be taken through execution, he/she can establish his/her title by adducing evidence either by oral or documentary and no separate suit can be entertained.

5. In such a view of the matter, as rightly found by the Execution Court, the petitioner established her title on the strength of her own document. She cannot expect the opposite party to produce the case bundles of the original suit from the trial court and to recall the witnesses for cross examination. Such a course is not open to the obstructor. Therefore, the petition to reopen the execution petition and recall the witnesses and further direction to produce the case bundles from the trial court are all not available for the obstructor.

6. The learned counsel for the respondents would submit that the obstruction petition itself was dismissed while the petitioner was pursuing her remedy in the Civil Revision Petition.

7. Considering the submissions made and also the facts and circumstances of the case, the order dated 30.04.2019 passed by the Execution Court in E.A.Nos.24, 26 and 25 of 2019 respectively, in E.A.No.74 of 2018 in E.P.No.51 of 2018 in O.S.No.236 of 2014, by the learned Subordinate Judge, Nilgiris at Udhagamandalam, is hereby confirmed. It is always open to the petitioner to approach the Execution Court to contest her obstruction petition under Order 21 Rule 97 of the Code of Civil Procedure on the strength of her own documents by filing appropriate petition to restore the same. The Execution Court is directed to provide an opportunity to the petitioner to agitate her valuable rights.

8. The Civil Revision Petitions are disposed of with the above observation and direction. No costs. Consequently, connected civil miscellaneous petition is closed.

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30.08.2019

Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking order

TK

Note: Issue order copy on 24.09.2019

To

The Subordinate Judge
Subordinate Court
Nilgiris at Udhagamandalam.



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M.GOVINDARAJ, J.

TK



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