

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition (PD) No.3232 of 2019
and C.M.P.No.21054 of 2019

Muthumanickam

-Vs-

... Petitioner

1.V.Rajendran

2.V.Ashokraj

...

Respondents

Prayer : Civil Revision Petition under Section 115 of C.P.C., against the fair and decretal order dated 26.07.2019 passed in E.A.SR.No.26474 of 2019 in E.P.No.1481 of 2017 in O.S.No.1139 of 2002 on the file of the IX Assistant City Civil Court at Chennai.

For Petitioners : Mr.M.Anai Muthuraja

For Respondents : Mr.D.Nandagopal

ORDER

This revision petition has been filed against the fair and decretal order dated 26.07.2019 passed in E.A.SR.No.26474 of 2019 in E.P.No.1481 of 2017 in O.S.No.1139 of 2002 on the file of the IX Assistant City Civil Court at Chennai.

2. Heard Mr.Anai Muthuraja, learned counsel for the petitioner, who would submit that the petitioner is the defendant in the suit in O.S.No.1139 of 2002 on the file of IX Assistant City Civil Court, Chennai, where the respondents / plaintiffs filed

a suit for bare injunction in respect of the suit property, where the decree was passed by the trial Court on 30.03.2005, as against which, though an appeal was filed in A.S.No.514 of 2005, the appellate Court also confirmed the same, by a decree dated 07.12.2005. Thereafter, no further appeal has been filed and therefore the decree and judgment has become final.

3. In the meanwhile, when the respondents / plaintiffs approached the Assistant Commissioner of Land Settlement, Tamil Nadu, Chennai 600 024, by filing an application to give assignment of the land ie., the suit property in Plot No.2 and 3, Darani Street, Vasantham Nagar, Velachery, Chennai, which is the land taken from the erstwhile owner, as excess land under the provisions of Urban Land Ceiling Act. While disposing of the application filed by the respondents / plaintiffs , the Assistant Commissioner, in a communication Na.Ka.No.1313 of 1999 dated 29.06.2006 has stated that, when spot investigation has been made by the said department for the purpose of deciding the application filed by the respondents/ plaintiffs for assignment of the suit property, it is found that apart from the respondents/ plaintiffs, somebody has been in occupation of the same, as the construction made in the said plots discloses that, the respondents/ plaintiffs having made such construction, therefore in this context, it was directed that the respondents/ plaintiffs can approach the Civil Court and get appropriate order to establish their right of possession of the property, and thereafter can approach the Urban Land Ceiling authorities for assignment.

4. By relying upon this communication, the learned counsel for the petitioner would submit that therefore, even though a bare injunction decree was obtained by the respondents/ plaintiffs before the trial Court, which has been confirmed by the first appellate Court, in view of the subsequent communication dated 29.06.2006 issued by the Assistant Commissioner of Land Settlement, Tamil Nadu, Chennai, they are not in possession of the suit property and therefore the decree passed by the trial Court is unacceptable and therefore, in that context, a Section 47 of the application was filed by the revision petitioner / defendant before the Execution Court and the same has been rejected at the threshold.

5. Learned counsel for the petitioner would further submit that, so far as the revision petitioners are concerned, they are not disturbing the possession of any one including the respondents / plaintiffs , as claimed by them in the Execution Proceedings. When that being so, the question of filing any Execution Petition to execute the same and by requiring the Execution Court to pass the order to arrest the judgment debtor may not arise.

6. I have heard Mr.Nandagopal, learned counsel for the Caveators, who entered appearance for the respondents, who would submit that admittedly there is a Civil Court decree in favour of the respondents / plaintiffs and the same has been confirmed by the first appellate Court. Therefore, the land in question, for which the plaintiffs had claimed possessory right in order to get assignment of the land, which

is the excess land taken from the erstwhile owner under the Urban Land Ceiling Act, application has been filed before the appropriate authority and the said authority, after consideration of the application, has directed the respondents/ plaintiffs to get a Civil Court decree with regard to the possession of the property, in view of the occupation of some other third party, not necessarily the defendant in the suit, which has also been concluded between the parties. Learned counsel further submits that as far as the said Civil Court decree in O.S.No.1139 of 2002 is concerned, as confirmed by the first appellate Court in A.S.No.514 of 2005, the same is an executable decree and therefore, in order to execute the same, Execution Petition has been filed. Therefore, if a stand is taken by the revision peititoners / defendants that, they are not disturbing the possession of the plaintiffs / respondents, the same can be recorded by this Court and suitable directions can be given to the Execution Court and accordingly the Execution Court shall decide the Execution Petition and give a quietus to the issue.

7. I have heard the submissions made by the learned counsel appearing for both sides and also perused the materials placed before this Court.

8. As has been rightly pointed out by the learned counsel for the respondents / plaintiffs , when the revision petitioner himself has taken a stand through the learned counsel appearing on his behalf that, he is not disturbing the possession, which is in fact the decree of injunction granted by the trial Court, which has to be

executed in the Execution Proceedings, it is open to the revision petitioner / defendant to file an affidavit before the Execution Court to that effect, and on such filing, the same can be recorded by the said Court and accordingly the Execution Proceedings can be concluded.

9. Thus, the issue presently raised herein can be given a quietus in the manner discussed above and thereafter it is open for the respondents / plaintiffs to work out his remedy in the manner known to law to get the assignment of the land in question.

10. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

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Index : yes / no
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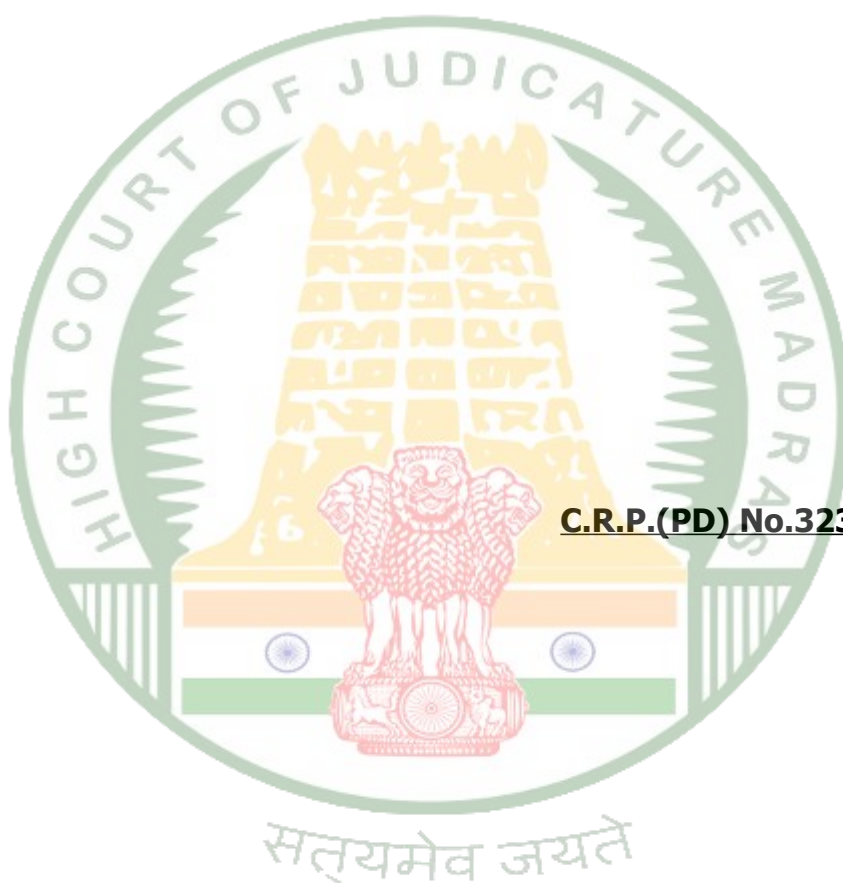
IX Assistant Judge, City Civil Court, Chennai.

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R. SURESH KUMAR, J.

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