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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.Nos.268 & 269 of 2021

and

CMP.No.2513 of 2021

Arukkani

..Petitioner in both CRP

Vs.

1.R.Sivanantham
Songappa Gounder (died)
Kasilinga Gounder (died)

2.Rukmani
3.Jaganathan
4.Kolandasamy
5.R.S.Nallasivam
6.Loganayaki
7.Throwpathi
8.Gandhimathi

..Respondents in both CRP

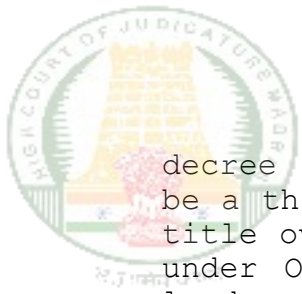
Common Prayer: Civil Revision Petitions filed under Section 115 of CPC., against the fair and decreetal order dated 10.12.2020 made in EA.Nos.13 & 14 of 2020 in EA.No.7 of 2019 in EP.No.22 of 2008 in OS.No.320 of 1999 on the file of the First Additional District Munsif Court, Erode.

For Petitioner in both CRP : Mr.Harish for Mr.N.Manoharan
For Respondents in both CRP : No appearance

C O M M O N O R D E R

Despite service, respondents are not appering either in person or through counsel, duly instructed.

2.These two revisions are directed against the orders passed in EA.Nos.13 & 14 of 2020 in EA.No.7 of 2019 in EP.No.22 of 2008. EP.No.22 of 2008 is an execution petition, seeking execution of a decree for mandatory injunction granted in AS.No.56 of 2015. A suit in OS.No.320 of 1999 was originally filed for the relief of permanent injunction and mandatory injunction. The Trial Court granted a decree for permanent injunction alone. On appeal, the Appellate Court granted a



decree for mandatory injunction. The petitioner, who claims to be a third party, filed EA.No.7 of 2019, setting up independent title over the property in question. Being an application filed under Order 21 Rule 97 of CPC., the petitioner was allowed to lead evidence in EA.No.7 of 2019. During the course of the enquiry, the petitioner filed applications in EA.Nos.13 & 14 of 2020, seeking condonation of delay in filing certain documents and to re-call herself as PW1 to mark those documents.

3.The said applications were opposed on the ground that the petitioner is attempting to delay further proceedings. The execution application in EA.No.7 of 2019 itself has been filed by the petitioner obstructing execution of the decree, setting up independent claim. The same will have to be tried as a suit, where all questions relating to title and interest of the parties to the proceedings will have to be gone into by the Court executing the decree. The learned Trial Judge has dismissed the applications solely on the ground of delay and the fact that the right of the petitioner is not being denied by the other respondents, who are defendants in the suit. The said observation of the learned District Munsif is not correct. The petitioner, asserts a right against the decree holders and not against co-judgment debtors. The decree holders, are opposing the claim of the petitioner. Therefore, it is for the petitioner to prove her title or interest in the property by adducing evidence. All that the petitioner seeks is to let in evidence. I do not think, the learned Trial Judge was right in dismissing the applications to produce documents and to re-call PW1.

4.In view of the above, these civil revision petitions are allowed, the orders of the I-Additional District Munsif, Erode made in EA.Nos.13 & 14 of 2020 are set aside. Applications in EA.Nos.13 & 14 of 2020 will stand allowed. The petitioner will be entitled to produce documents and lead evidence. No costs. Consequently, connected miscellaneous petition is closed. The petitioner shall complete her evidence within a period of three months from the date of commencement of the proceedings before the Trial Court after this order.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Kkn



To:

The I-Additional District Munsif Court,
Erode.

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Copy To

The Section Officer,
VR Section,
High Court, Madras.

+2cc to Mr.N.Manokaran, Advocate SR.No.3356, 3357

C.R.P.Nos.268 & 269 of 2021
and
CMP.No.2513 of 2021

PMK (CO)
GN (17/02/2022)
SU (18/02/2022)