



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2771 of 2016
and C.M.P.No.14180 of 2016

Ganesan

... Petitioner

VS.

1.Malaiyan

2.Pichaikari

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure

Code, praying to set aside the fair and decretal order in E.A.No.24 of 2014 in E.P.No.17 of 2011 in O.S.No.102 of 2004, dated 13.04.2016, on the file of the Principal District Munsif, Kallakurichi and thereby allow the revision.

For Petitioner : Mr.N.Suresh

For Respondents : No Appearance

ORDER

The revision petitioner herein, filed a suit for specific performance against the first respondent in O.S.No.102 of 2004 and obtained a decree. After execution of the decree for specific performance, a sale deed appeared to have been executed by the Court on 19.08.2010 and



thereafter, the revision petitioner filed E.P.No.17 of 2011 for delivery of the property covered under the said sale deed.

2. When the above said execution petition in E.P.No.17 of 2011 is pending, the revision petitioner filed E.A.No.389 of 2011 against the first respondent/judgment debtor seeking a direction to demolish the Terraced house found in the suit property, after evicting the 3rd party residing therein. The said Application was dismissed by the Executing Court on the ground that when, admittedly the 3rd party is found to be in possession of the property in question, without impleading the 3rd party, the petitioner is not entitled to seek any relief and consequently the E.A.No.389 of 2011 was dismissed. Thereafter, the revision petitioner filed another Application in E.A.No.24 of 2014, seeking same relief after impleading the 3rd party found to be in possession of the suit property namely, the second respondent herein.

3. However for the reasons best known to the revision petitioner, he has not pressed the Application in E.A.No.24 of 2014 as against the second respondent and proceeded with the case as against R1



alone. The executing Court dismissed the E.A.No.24 of 2014 by observing that similar application filed against the first respondent in E.A.No.389 of 2011 was already dismissed on the ground that the 3rd party, who is in possession of the suit property had not been impleaded.

4. Now in the present Application also the revision petitioner for the reasons best known to him not pressed the petition against the second respondent/3rd party. Hence, in view of the dismissal of the earlier Application against the first respondent, the second application for very same relief is not maintainable and consequently, dismissed the execution application.

5. Aggrieved by the said order, the decree holder/revision petitioner has come up with this revision.

6. I have heard the arguments of Mr.N.Suresh, learned counsel appearing for the revision petitioner. The first respondent though served there is no representation.



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7. It is brought to the notice of this Court that the second respondent is already dead. From the impugned order, it is very clear E.A.No.24 of 2014 was dismissed as against the second respondent as not pressed even before the executing Court. Hence the revision petitioner is not entitled to array the second respondent as a party in this revision. Hence, this Court proceed to dispose of the revision after hearing the arguments of the learned counsel for the petitioner.

8. From a perusal of the impugned order, it is clear that that the revision petitioner earlier filed an Application for removal of construction in the suit property and eviction of the 3rd party found to be in a possession in E.A.No.389 of 2011, without impleading the 3rd party and hence it was dismissed. Subsequently, the revision petitioner filed E.A.No.24 of 2014, but for the reasons best known to the revision petitioner, E.A.No.24 of 2014 was not pressed as against the said 3rd party namely Pichaikari/second respondent therein. Consequently, E.A.No.24 of 2014 was dismissed by the executing Court as against R1 also, on the ground, a similar application was earlier dismissed in E.A.No.389 of 2011, on the ground of



non- impleadment of 3rd party found to be in possession of suit property.

Now, in the present application, though the 3rd party was originally arrayed as 2nd respondent, subsequently, when Application was taken up for hearing, the same was not pressed as against 3rd party. Therefore, the executing Court finding no merit rightly dismissed E.A.No.24 of 2014, citing dismissal of similar petition earlier.

9. There is no irregularity or illegality in the order passed by the Executing Court and therefore the revision petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
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To
The Principal District Munsif, Kallakurichi.



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S.SOUNTHAR, J.
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