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C.R.P.(PD).Nos.1715 & 1716 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P.(PD).Nos.1715 & 1716 of 2022

and

C.M.P.Nos.8643 & 8644 of 2022

A.Margrate Rita

... Petitioner

Vs.

1.G.Bhakthavatchalam

2.Lakshmi

... Respondents

PRAYER : Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the common fair and decreetal order dated 23.04.2022 made by the learned Principal District Munsif, Alandur in E.A.Nos.273 and 274 of 2017 in E.P.No.3 of 2016 in O.S.No.514 of 2009 by allowing the above revision petitions.

For Petitioner : Mr.R.Narayanan

For Respondents : Mr.T.M.Mano



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ORDER

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2. The revision petitioner is the defendant in the suit. The 1st respondent plaintiff has filed a suit for recovery of possession and the suit was also decreed in his favour. Thereafter, the respondent/ plaintiff filed execution petition in E.P.No.3 of 2016 for delivering the possession of the suit property in pursuance of the decree. During the execution proceedings, the respondent/ decree holder filed two applications in E.A.Nos.273 and 274 of 2017 seeking orders to break open the door and police protection. The above applications were allowed. Aggrieved over that the petitioner/ defendant has preferred these revision petitions.

3. The learned counsel for the revision petitioner submitted that he has also preferred an appeal in A.S.No.15 of 2018 before the Sub Court, Tambaram which was later transferred to Sub Court, Alanudur and



renumbered as A.S.No.231 of 2021. The learned counsel further submitted that the executing Court retained the suit records along with execution proceedings records and in view of that the appeal cannot be proceeded and before getting the lower Court records, orders to break open and police protection were passed. He further submitted that if the property is delivered the entire appeal would become waste even if the appeal is allowed.

4. It is seen from the E-Court diary that the Appeal is being adjourned from time to time 'for awaiting records' from the lower Court. Before disposal the appeal, if the execution proceeding is completed, the appeal filed by the revision petitioner would become infructuous. To ensure that the appeal suit is disposed of on merits, I feel that the orders passed by the executing Court to break open and for police protection should be set aside and the executing Court should be directed to send the suit records immediately to the first appellate Court for disposing the appeal.

5. In view of the above stated reasons, these Civil Revision Petitions in CRP.Nos.1715 and 1716 of 2022 are allowed and the common fair and decreetal order dated 23.04.2022 made by the learned Principal District



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Munsif, Alandur in E.A.Nos.273 and 274 of 2017 in E.P.No.3 of 2016 in O.S.No.514 of 2009 is set aside and the learned Principal District Munsif, Alandur is directed to send the records in O.S.No.514 of 2009 immediately to the Sub-Court, Alandur forthwith. On receipt of the suit records, the learned Sub-Judge, Alandur is directed to dispose of the appeal within two months from the date of receipt of the records from the Principal District Munsif Court, Alandur. The revision petitioner is at liberty to prefer an application for stay of the execution proceedings before the appellate Court itself. No costs. Consequently, the connected civil miscellaneous petitions are closed.

13.06.2022

Index: Yes/No

Speaking / Non Speaking Order

dsa

Note : Issue order copy by 15.06.2022.



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To

1. The Sub-Judge, Alandur.

2. The Principal District Munsif, Alandur.



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R.N.MANJULA, J

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