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C.R.P. No.2590 of 2019

C.R.P. No.2590 of 2019 and
C.M.P. Nos.17063 & 19017 of 2019

N.SESHASAYEE, J.

The present civil revision petition is laid by the judgment debtor in a suit for recovery of possession.

2. The facts that lead to the filing of the suit and the development that has taken place subsequently are briefly stated :

- The respondent/plaintiff has laid a suit in O.S. No.4117 of 2005 before the III Additional City Civil Court, Chennai, for recovery of possession of 600 sq.ft. of vacant site. The defendant/revision petitioner herein resisted the suit on the ground that he is in possession of the entire property. After the trial, on 01.02.2008, the trial court dismissed the suit.
- Aggrieved by the decree of the trial court, the plaintiff therein filed A.S. No.577 of 2005 and that came to be allowed on 30.04.2010, which implies that the suit was decreed.
- Challenging the said decree of the first appellate court, the defendant preferred a second appeal in S.A. No.480 of 2011, rather unsuccessfully as the same was dismissed by this court on



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09.08.2011. The further attempt of the defendant to approach the Hon'ble Supreme Court was also went against him, as the Hon'ble Supreme Court dismissed the SLP on 28.11.2011.

2.1. The stage II is all about the execution proceedings. The plaintiff/decreed holder would now institute an execution petition in E.P. No.2017 of 2010. On 16.10.2014, the execution court ordered delivery. Challenging the same, the defendant/judgment debtor/revision petitioner herein laid C.R.P. No.583 of 2015. In the course of hearing, this court found that the real dispute between the parties appears to lie in identifying their respective property and accordingly, it had appointed an Advocate-Commissioner to be assisted by the revenue officials for identifying the suit property vis-a-vis the property of the defendant, as per the document of the defendant. Accordingly, on 23.11.2016, the Commissioner had filed his report along with necessary plans. Recording the same on 08.02.2018, this court dismissed the civil revision petition in C.R.P. No.583 of 2015 on the ground that inasmuch as the Commissioner has now identified the property therein, there is no need to interfere with the order of the trial court.



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2.3. Now the case is at stage 3 of the proceedings. The judgment debtor would now take out a memo before the execution court to effect delivery based on Commissioner's report referred to above. This Memo was dismissed. This is now under challenge in this revision.

3. On 23.12.2022, this court set aside the order in E.P. No.2017 of 2010 and directed the revision petitioner/judgment debtor to hand over vacant possession as per Advocate-Commissioner's report and rough sketch dated 23.11.2016 on or before 23.01.2023.

4. This has now led to another situation because while the revision petitioner is willing to surrender vacant possession in terms of the Commissioner's report dated 23.11.2016, according to him, the decree holder/respondent herein is not willing to take possession.

5. On 24.01.2023, this order came to be clarified by the same learned single Judge of this court who has passed the earlier order on 23.12.2022 and the court has posted the matter to 07.02.2023 for reporting compliance. The operative portion of this order reads thus:

" In view of the order passed by this court on 23.12.2022, it is clarified that the property to be handed



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over by the petitioner to the respondents is at Door No.102-B admeasuring from west to east 29 feet and north to south on the western side is 20 feet 9 inches.

2. Accordingly, the Taluk Surveyor is directed to measure the suit property and comply the order passed by this court within a period of two weeks from today.

3. Post the case for reporting compliance on 07.02.2023."

6. The learned counsel for the revision petitioner would now submit that while he has always been ready to abide by the order of this court dated 23.12.2022 as clarified by the order dated 24.01.2023, and in pursuant to the same, the bailiff of the court had visited the property and found that to deliver the said portion as stipulated by the court, the revision petitioner may have to demolish a small portion of his construction measuring 20" x 20.5'. In order to do the same, the judgment debtor/revision petitioner may have to enter the property of the decree holder so that the demolition can be complete. According to the revision petitioner, this is being resisted by the decree holder.

7. Per contra, the learned counsel for the respondent/decreed holder would submit that the difficulty is in identifying the building bearing Door



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No.102B and unless it is done, the order cannot be complied with.

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8. Inasmuch as the matter has been before the learned single Judge who has dealt with the matter earlier, it is only appropriate that the matter is placed before the same Judge to resolve the present dispute. There shall be an order of status quo till the matter is placed before the learned single Judge who dealt with the matter.

9. The Registry is now required to post the matter before the learned single Judge who heard the matter, after obtaining appropriate orders from the Hon'ble The Chief Justice.

10.04.2023

Asr/-



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