



CRP(MD)No.2282 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 14.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.2282 of 2022
and C.M.P(MD).No.10861 of 2022

1.Muthusamy Udaiyar
2.Chinnadurai Udaiyar

: Petitioners/3rd Party/3rd Party/3rd Party

Vs.,

1.Dhamodaran

: 1st Respondent/Petitioner/Decree Holder/Plaintiff

2.Karuppaiah Udaiyar

: 2nd Respondent/Respondent/Judgment Debtor/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the petition and order made in E.A.No.141 of 2015 in E.P.No.43 of 2015 in O.S.No.253 of 2013 on the file of the learned District Munsif cum Judicial Magistrate, Kandarovakottai, dated 15.10.2022 and to set aside the same.

For Petitioners : Mr.V.Sasikumar



CRP(MD)No.2282 of 2022

WEB COPY

ORDER

This civil revision petition is filed as against the order of delivery dated 15.10.2022, passed by the learned District Munsif cum Judicial Magistrate, Kandarakottai, in E.A.No.141 of 2015 in E.P.No.43 of 2015 in O.S.No.253 of 2013, in and by which, order of delivery was passed.

2.The learned counsel appearing for the petitioners submitted that the suit schedule property originally belonged to one Subbaiah Chettiar, who has executed a lease deed, dated 24.03.1988, in favour of one Karuppaiah Udaiyar, the maternal uncle of the petitioners. Pursuant to the lease deed, the said Karuppaiah Udaiyar was taking care of the property in S.F.No.150/1A/1C2A and he has also put up a shed in that place and also obtained electricity service connection in his name. He further submitted that one Rajakannu attempted to dispossess the petitioners from the suit schedule property, stating that Subbaiah Chettiar, the original owner, has executed a power deed with regard to the suit schedule property in his favour. Therefore, the petitioners / third party, along with the original lessee, Karuppaiah Udaiyar, filed a suit for permanent injunction as against the said Rajakannu in O.S.No.43 of 2003 and the same was decreed *ex-parte* on 30.06.2003. The



application filed to set aside the *ex-parte* decree was also dismissed and therefore, the decree passed in O.S.No.43 of 2003 has become absolute.

3.While so, the said Rajakannu has created a sale deed along with his wife, Valarmathi, on 31.07.2003 in favour of the first respondent / plaintiff, in respect of the subject property and on the strength of that document, the first respondent / Dhamodaran has filed the present suit in O.S.No.253 of 2013 as against Karuppaiah Udaiyar alone, without impleading the petitioners. Since Karuppaiah Udaiyar failed to appear in the suit, *ex-parte* decree was passed. To execute the *ex-parte* decree, the plaintiff / Dhamodaran filed E.P.No.43 of 2015 before the trial Court and the petitioners, on knowing the above, have also filed an obstruction petition in E.A.No.1 of 2019 under Order 21 Rule 97 of Civil Procedure code, by referring the decree, which was obtained along with Karuppaiah Udaiyar as against Rajakannu / the vendor of the plaintiff, Dhamodaran.

4.He further submitted that the obstruction application filed by the petitioners in E.A.No.1 of 2019 was dismissed by the trial Court on 13.04.2022. As against the same, the petitioners have also preferred an appeal before the Principal Subordinate Court, Pudukkottai in C.M.A.No.4 of 2022 and the same is



pending consideration. Pending the appeal, the Execution Court has passed the impugned order for delivery of the property and the first respondent / plaintiff is also attempting to demolish the house property, using heavy machineries, where the petitioners are residing.

5.Considering this submission of the learned counsel for the petitioner, this Court granted leave to the petitioners to move this revision petition and also permitted them to serve notice on the learned counsel who represents the respondents before the trial Court. However, the learned counsel for the petitioners submitted that the learned counsel who represents the respondents before the trial Court has refused to receive the notice.

6.Though this Court is not inclined to entertain the revision petition without hearing the other side, considering the plea that the petitioners are residing in the property and in view of the delivery order, an attempt is being made by the first respondent / plaintiff to demolish the property, this Court disposes of this revision petition with a direction to the learned Principal Subordinate Judge, Pudukkottai, to dispose of C.M.A.No.4 of 2022, on merits and in accordance with law, within a period of three (3) weeks from the date of receipt of a copy of this order. Till such



CRP(MD)No.2282 of 2022

time, the order passed by the Execution Court in E.A.No.141 of 2015 in E.P.No.43 of 2015, dated 15.10.2022, shall not be given effect to. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

14.11.2022

Index : Yes / No

Internet : Yes / No

Rmk

Note: Issue order copy on 14.11.2022

To

- 1.The Principal Subordinate Judge, Pudukkottai.
- 2.The District Munsif cum Judicial Magistrate, Kandarakottai,
Pudukkottai District.



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CRP(MD)No.2282 of 2022

B.PUGALENDHI, J.

Rmk

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