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C.R.P (MD) No.2365 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.11.2022

CORAM:

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

C.R.P (MD) No.2365 of 2022

1.Gorge Sam

2.Johnseenmorris

3.Alwin Rex

... Petitioners

Vs

1.Sam Augustin

2.Mary Sobitha

3.Saju

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the Sub Court, Padmanabhapuram to number the petition filed by the revision petitioners herein under Order 21 Rule 97 of CPC r/w Section 151 CPC against EP.No.65 of 2018 in OS.No.24 of 2010 on the file of the Sub Court, Padmanabhapuram.

For Petitioner : Mr.S.Antony Arul Raj

ORDER



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The civil revision petition has been filed for a direction to the Sub Court, Padmanabhapuram to number the petition filed by the petitioners under Order XXI Rule 97 of CPC r/w Section 151 CPC against EP.No.65 of 2018 in OS.No.24 of 2010.

2.The suit in OS.No.24 of 2010 before the Sub Court, Padmanabhapuram was filed for specific performance and the suit was decreed in favour of the plaintiff by judgment and decree dated 10.04.2017. The plaintiff / decree holder filed an application for execution of the decree in EP.No.65 of 2018 and the same was also ordered and the sale deed has also been executed. The petitioners are third parties to the suit in OS.No.24 of 2010 and EP.No.65 of 2018. They filed an application under Order XXI Rule 97 of CPC r/w Section 151 CPC to set aside the decree passed in OS.No.24 of 2010 and to set aside the sale executed in favour of the plaintiff in EP.No.65 of 2018, on the ground that the suit property belongs to their father and the right of their father has been confirmed by the decree



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passed in OS.No.101 of 2000 and OS.No.255 of 2007 by the learned District Munsif, Padmanabhapuram. Suppressing the same, a collusive suit has been filed by the respondents herein and decree has been obtained behind their back. On coming to know about the said decree, the petitioners have filed the above application. However, the Court returned the application on 15.11.2021 that 'correct provision of law to be stated' and it was represented, however, by referring the same provision it was again returned on 12.07.2022, even though the application was filed under XXI Rule 97 of CPC and therefore, the petitioners are before this Court with the above prayer.

3.This Court considered the submission of the petitioner and perused the materials placed on record.

4.It is relevant to extract Order XXI Rule 97 CPC, which reads as under:

"O.21, R.97 : Resistance or obstruction to possession of immovable property :-

(1) Where the holder of a decree for the possession of immovable property the purchaser



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of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub rule (1) the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

5.The Hon'ble Supreme Court in Sreenath and Rajesh and ors AIR 1998 SC 1827 held that the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the executing court could adjudicate the claim made in any such application under order XXI, Rule 97 CPC. Thus by the use of the words 'any person' it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.

6.When an application is filed under Order XXI Rule 97 CPC, the court is enjoined to adjudicate upon the right,



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title and interest claimed in the property arising between the parties to a proceedings or between the decree-holder and the person claiming independent right title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject or right of appeal and not a matter to be agitated by a separate suit. The petitioners claim that they are having decree granted in their favour by the learned District Munsif, Padmanabhapuram.

7. In view of the above discussion, it is clear that any person including a stranger claiming right on their own, can file the application under Order XXI Rule 97 CPC and therefore, this civil revision petition is allowed. The Court shall number the petition and proceed in accordance with law. No costs.

29.11.2022

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To

The Sub Court,
Padmanabhapuram.

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