



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos. 97 and 98 of 2021

and

C.M.P.Nos.899 and 903 of 2021

In C.R.P.No.97 of 2021

Banupriya

...Petitioner

Vs.

1.Tamilselvi

2.Amutha

...Respondents

In C.R.P.No.98 of 2021

1.Pandian

2.Babu

...Petitioners.

Vs.

1.Tamilselvi

2.Amutha

...Respondents.

Prayer in C.R.P.No.97 of 2021: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 05.03.2020 passed in E.A.No.155 of 2019 in E.P.No.23 of 2016 in O.S.No.86 of 2004 on the file of the Learned Principal District Munisf, Ulundurpet.

Prayer in C.R.P.No.98 of 2021: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal order dated 05.03.2020 passed in E.A.No.13 of 2020 in E.P.No.23 of 2016 in O.S.No.86 of 2004 on the file of the Learned Principal District Munisf, Ulundurpet.

In both CRPs.

For Petitioners : Mr.T.S.Baskaran

For Respondents : Mr.D.Vasanth

: for Mr.N.Suresh.



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COMMON ORDER

These Civil Revision Petitions arise against an order dated 05.03.2020 passed under Order 21 Rule 106 of Code of Civil Procedure, 1908 in E.A.No.155 of 2019 and E.A.No.13 of 2020 in E.P.No.23 of 2016 and in O.S.No.86 of 2004 on the file of the Learned Principal District Munisf, Ulundurpet.

2. The petitioners before me are the judgment debtors. They were served with the copy of the Execution Petition for the hearing date 28.08.2014. The matter has suffered an adjournment and finally on 18.01.2019 they were set *ex-parte*. An application to set aside the *ex-parte* order was filed on 07.01.2020.

3. The Learned Trial Judge dismissed the application on the ground that no cause had been shown to set aside the *ex-parte order*.

4. The suit is of nearly 29 years vintage. The suit for partition was filed in O.S.No.53 of 1994. It was decreed on 14.11.2000. To pass a final



decree, an application was filed in I.A.No.284/2004. It was passed on 30.12.2004. An execution petition was filed on 25.01.2016 and EP was ordered on 18.01.2019. The *ex-parte* order was passed on 18.01.2019.

5. The case of Mr.T.S.Baskaran, learned Counsel for the petitioners, is that the petitioners were minors and they have declared major only pending the execution proceeding.

6. I have gone through the dates on which the first son became a major. During the relevant time when he filed an affidavit he was 32 years old. Therefore, to plead minority is only a smoke screen projected for the purpose of getting over the decree. The decree is for a partition and as already pointed out 29 years have gone by.

7. The Civil Revision Petitioners have also been allotted properties in the partition decree. They can always execute that portion of the decree by paying separate court fee and levying separate execution.



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8. Mr.Baskar would argue that the entire decree has been obtained by fraud and therefore, the partition decree must be re-opened. That is not a matter for the executing court to decide. The law that an executing court cannot go behind the decree is as ancient as the hills. If I were to permit such pleas to be raised before the executing court, then executions would never come to an end. The affidavit does not state even a single reason as to why the parties were not present before the court on 18.01.2019. Apart from that, the reason for the delay, caused between 18.01.2019 and filing of the application dated 17.12.2019 has not been explained at all.

9. It is of utmost necessity that the execution proceedings are completed at the earliest. To give an opportunity to all invented stories and projected causes which do not exist will only delay the execution. Therefore, the application seeking to set aside the *ex-parte* order was rightly dismissed.

10. I am not convinced with the reasons in C.R.P.Nos.97 and 98 of 2021. These Civil Revision Petitions stand dismissed. No costs. Connected



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Civil Miscellaneous Petitions are closed.

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Index : Yes/No
Neutral Citation Case : Yes/No
nst

To:
The Principal District Munsif,
Civil Judge (Junior Division),
Ulundurpet.



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V. LAKSHMINARAYANAN.J,

nst

C.R.P.Nos. 97 and 98 of 2021
and
C.M.P.Nos.899 and 903 of 2021



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