



CRP No.2033 of 2021
and CMP.Nos.15441 & 15432 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP No.2033 of 2021
and
CMP.Nos.15441 & 15432 of 2021

1. Issac Prabhu
2. Issac Babu
3. Issac Raja
4. Arul Rani
5. Ashokraj
6. Amirthraj
7. Aruljothi
8. Arulselvi
9. Anandaraj
10. Anburaj
11. Aruldevi

... Petitioners

-Vs-

T.Rajkumar

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order passed in EA.No.4 of 2020 in EA.No.319 of 2005 in EP.No.705 of 2004 on the file of the First Additional District Munsif (FAC) III Additional District Munsif at Coimbatore dated 23rd December 2020.



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CRP No.2033 of 2021
and CMP.Nos.15441 & 15432 of 2021

For Petitioners : Mr.C.Deivasigamani

For Respondent : Mr.R.Bharath Kumar

ORDER

This Civil Revision Petition arises against the dismissal of a petition filed in EA.No.4 of 2020 in EA.No.319 of 2005 in EP.No.705 of 2004 in RCOP.No.152 of 1999.

2. EA.No.319 of 2005 had been filed by few third parties under Order 21 Rule 97 of The Code of Civil Procedure. The said application is still pending. In the meantime, EA.No.4 of 2020 has been filed for the following relief:-

“the Petitioners herein pray that this Hon'ble Court may be pleased to demolish the structures and deliver vacant possession of the property pending disposal of the above execution petition and thus render justice.”

3. I heard Mr.C.Deivasigamani and Mr.R.Bharath Kumar for the respective parties.



CRP No.2033 of 2021
and CMP.Nos.15441 & 15432 of 2021

WEB COPY

4. My pointed question to Mr.C.Deivasigamani was as to how this application is maintainable when the decree in the RCOP proceedings remain intact. He would state that when a fraud is played on a Court, the decree can be set aside, even the collateral proceedings. The position of law laid down in *S.P.Chengalvaraya Naidu Vs. Jagannath and others* reported in (1994) 1 SCC 1 is too well settled and need not be reiterated here. The question is, whether the said judgment is applicable in the facts and circumstances of the present case.

5. A decree holder is entitled to enjoy the fruits of the decree till the decree itself is set aside. As on today, the application under Order 21 Rule 97 is pending. If the application filed under Order 21 Rule 97 is allowed, only then the question of redelivery arises. If the decree is not set aside or if the obstructor petition is not allowed, the Court cannot grant “interim re-delivery”. Such a provision is unknown to civil law. The basis on which Mr.C.Deivasigamani's client make this claim is unpalatable to me.



*CRP No.2033 of 2021
and CMP.Nos.15441 & 15432 of 2021*

WEB COPY

6. I see no merits in the Revision. The order passed by the learned Trial Judge in EA.No.4 of 2020 in EA.No.319 of 2005 in EP.No.705 of 2004 in RCOP.No.152 of 1999 is confirmed. This Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected CMPs are also closed.

27.07.2023

kmi

To

1. The First Additional District Munsif (FAC),
III Additional District Munsif at Coimbatore.



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*CRP No.2033 of 2021
and CMP.Nos.15441 & 15432 of 2021*

V.LAKSHMINARAYANAN, J.

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CRP No.2033 of 2021
and
CMP.Nos.15441 & 15432 of 2021

27.07.2023