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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2170 of 2015

and

M.P.No.1 of 2015

Othimalaigounder@Natarajan (died)

1.Palaniammal,
2.Kalpana,
3.Thirumurugan

...Petitioners

Vs.

1.Palaniammal
2.Muthusamygounder
3.S.Kavitha
4.M.Kasthuri
5.Komarasamy

...Respondents

(R3 and 4 brought on record as LRs of the deceased R2 viz Muthusamygounder and R5 impleaded vide court order dated 8/3/2021 made in CMPNos. 25949/2019 & 1555/2021 in CRP No. 2170/2015 by GKIJ).



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to allow this Civil Revision Petition, to set aside the petition and the docket order in E.A.No.85 of 2015 in E.A.No.8 of 2007 in E.P.No.124/2004 in O.S.No.198 of 2002 dated 18.04.2015 on the file of the District Munsif Court at Sathyamangalam, Erode-District by allowing the present Civil Revision Petition.

For Petitioners : Mr.MA.P.Thangavel
For Respondents :
For R1 : Mr.K.Soundara Rajan
For R2 : Died-Steps Taken
For R3 to R4 : Mr.B.Gokul
For R5 : Ms.Srivaishnavi
: for Mr.C.T.Mohan
Learned Sr.Counsel.

ORDER

This Civil Revision Petition arises against an order dismissing an application filed under Order 21 Rule 106 of the Civil Procedure Code, 1908. E.A.No.85 of 2014 was filed to restore E.A.No.08 of 2007. E.A.No.08 of 2007 is an application filed under Order 21 Rule 58 by one Odhimalai Gounder. He claims the property pursuant to a sale agreement dated 17.08.2002 which crystallizes into a sale deed on 17.04.2003.

2. Mr.M.A.P.Thangavel, learned counsel representing the petitioner



would state that in the previous round of litigation the E.A. was dismissed but the appeal preferred therefrom in C.M.A.No.23/2008 was allowed in order to implead the Auction Purchaser. He states that the Auction Purchaser has been impleaded and all the requirements necessary for amendment had been carried out. This is stoutly denied by Mr.C.T.Mohan, learned Senior Counsel appearing for Ms.Shri Vaishnavi representing the 5th respondent. He would state that the entire application in E.A.No.8 of 2007 is an abuse of process of law and is not at all tenable on merits.

3. I am not going into the merits of E.A.No.08 of 2007. That is the application under Order 21 Rule 58 which necessarily has to be tried like a suit. The issue before the court is whether the unregistered agreement holder gets a right over the property which has been attached pursuant to an order passed by the court in a money suit. Since the proceedings affect vital rights of parties, I am inclined to grant the petitioner one final opportunity to contest the proceedings. However, this is not without any conditions.

4. Since I am directing the impleading of the Auction Purchaser and filing of APC, the C.M.A.No.1 of 2021 now pending before the Sub Court shall be closed as infructuous.



5. The order passed in E.A.No.85 of 2014 dated 18.04.2015 is set aside on the conditions:-

(i). The amended petition in E.A.No.08 of 2007 will be filed on or before 28.07.2023. The E.A. will be taken up for hearing and would be disposed of on or before 30.09.2023.

(ii). On disposal, the learned District Munsif is directed to submit a report before this court, in order to get E.A.No.08 of 2007 restored. The petitioner shall pay a cost of Rs.10,000/- to the counsel appearing for the Auction Purchaser before the Trial Court on or before 26.07.2023.

(iii). It is made clear that if the cost is not paid, the present CRP will stand dismissed.

6. With the above this Civil Revision Petition stands closed. No costs. Connected Miscellaneous Petition is closed.

18.07.2023

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



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Note:- *Registry is directed to upload order copy on 18.07.2023.*

To:

The
District Munsif Court,
Sathyamangalam,
Erode District.



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V.LAKSHMINARAYANAN,J,

nst

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