



C.R.P.No.1581 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1581 of 2013 &
M.P.Nos.1 & 2 of 2013

K.Ekambaram

...Petitioner

Vs.

G.Gandhimathi

...Respondent

Prayer: Petition filed under Article **227** of the Constitution of India to set aside the impugned order in E.P.No.4411 of 2011 in O.S.No.1208 of 1996 passed on 28.02.2013 on the file of the learned Judge in IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.G.Thangavel

For Respondent : Mrs.R.K.Sekina Reshma

ORDER

This Civil Revision Petition arises against the order dated 28.02.2013 in E.P.No.4411 of 2011.

2. For the sake of convenience, the parties will be referred to as decree holder and judgment debtor.



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3. An Execution petition was filed in E.P.No.4411 of 2011 for execution of the decree in O.S.No.1208 of 1996. The schedule of the property in O.S.No.1208 of 1996 is as follows:

“Portion the property bearing door No.16, Dharmaraja Koil Street, Chintadripet, Madras-2 being a dilapidated cattle shed with tin sheet roofing measuring about 100 sq ft or thereabout a bounded on the south by Dharmaraja Koil Street and on the east, west and north by the rest of the property belonging to the plaintiff.”

4. The delivery was effected by the executing court in pursuant to the orders passed in E.P.No.4411 of 2011. Prior to handing over of possession of the property to the decree holder, the court had directed the Government Surveyor to survey the property and thereafter, hand over possession.

5. The Civil Revision Petitioner does not claim an independent right over the property, but claims that he was put in possession of the property as tenant. On the basis of these averments, he obtained a decree for permanent injunction, not to be evicted, except otherwise in accordance with law in



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O.S.No.4449 of 1995. In this execution petition, the judgment debtor attempted to raise all disputes with respect to the measurement and identification of the property.

6. Learned Executing judge has returned the finding that only after proper verification and identification, delivery was given as per its order dated 24.11.2012. Though the Executing Court has also recorded the fact that the judgment debtor had accepted the identification and removed the articles lying in the portion and allowed the decree holder to lock the premises, it is only thereafter he has come up with an application in E.A.No.853 of 2013. The Executing Court has gone on the basis of the settled position that the “boundaries prevail over extent” and handed over possession.

7. I do not find any error or irregularity committed by the Court as reading of the decree shows that the boundaries is very clear and it is only the cattle shed which is 100 sq. ft. The cattle shed is a part of schedule of property that has been given in the decree.

8. Mr.G.Thangavel, learned counsel would argue that by virtue of the



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decree in O.S.No.No.4449 of 1995, he is entitled to continue in possession.
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9. I have carefully gone through the decree in O.S.No.4449 of 1995. It only protects the possession of the plaintiff, Ekambaram till he dispossessed in the manner known to law. The execution of the decree in O.S.No.1208 of 1996 is a manner known to law. I should point out that the judgment debtor though disputed the identity, never bothered to enter the witness box, to depose as regards the same. There being no evidence before the Court to the contra, it came to the conclusion that it did.

10. Therefore, there is no illegality or irregularity in the order passed by the Executing Court in E.P.No.4411 of 2011 which deserves an order of dismissal. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023

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



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To

The IX Assistant City City Court, Chennai.



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V. LAKSHMINARAYANAN, J,

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