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CMP.No.4746 of 2023

in

CRP.SR.No.29031 of 2023

SATHI KUMAR SUKUMARA KURUP.J.,

This Petition is filed by the third Party to the proceedings in E.P.No.633/2016 in O.S.No.1398/2005.

2. It is the submission of the learned Counsel for the Petitioner/third Party that the Suit was filed by the Respondent in O.S.No.1398/2005 before the learned XIV Assistant Judge, City Civil Court, Chennai against Narasamma as D-1 and Tamil Nadu Slum Clearance Board as D-2.

3. It is the submission of the learned Counsel for the Plaintiff in the Suit that the property bearing Door No.68, Plot No.289, Bharathy Nagar, Second street, Villivakkam, Chennai which is the schedule property actually belonged to one Kuppusamy Naicker, the co-brother of the Plaintiff herein, he having acquired the same with his self-acquired funds. The said Kuppusamy Naicker died leaving behind him a Will dated 22.07.1981. Based on which, the Plaintiff in O.S.No.1398/2005 claimed title to the property. One K.Raman who was an agnate of deceased Kuppusamy



Naicker was allowed to perform the ceremonies of Kuppusamy Naicker.

He took away all the original documents of title including the Will left behind by the deceased Kuppusamy Naicker. The Plaintiff had to cause search in the Office of the Sub Registrar of Assurance and obtained a registration copy of the Will. Based on the Will, the Plaintiff had filed a Petition in O.P.No.118/1986, the said O.P was contested by the said K.Raman. Therefore, it was converted into TOS.No.29/1987 before this Court. As per the Judgment and decree dated 13.01.1999, letters of administration was granted in the Suit in O.S.No.1398/2005. After losing TOS, the said Raman had fabricated several bogus and fraudulent documents by impersonating fictitious persons and had handed over the properties to the first Defendant/Narasamma. The first Defendant had filed the Suit in O.S.No.734/2000 for injunction before the learned XVI Assistant Judge, City Civil Court, Chennai. The Plaintiff in the Suit in O.S.No.1998 had filed written statement in the Suit. In the light of the possession obtained by the first Defendant with an ulterior motive, she had entered into agreement of lease with the third Defendant by fraudulent deed. The first Defendant had taken possession of the property. Therefore, the Plaintiff in



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O.S.No.1398/2005 sought for declaration of title to the property bearing Door No.68, Plot No.289, Bharathi Nagar, II Street, Villivakkam, Chennai and consequently directing the first Defendant to deliver the vacant possession of the property bearing Door No.68, Plot No.289 and also directing the first Defendant to pay to the Plaintiff for a sum of Rs.2,36,000/- towards past mesne profits for unlawful possession and occupation. Also, the Plaintiff sought permanent injunction restraining the first Defendant, her men, servants, officials, agents or anyone claiming through her from in any manner altering condition of the Suit property by putting up any construction.

4. The learned Counsel for the Petitioner herein/third party in the Execution Proceedings had stated that after filing of the Suit, the Plaintiff in O.S.No.1398/2005 had amended the Plaint thereby instead of Plot No.289, it was 288 which is in possession of the third party/Petitioner herein. After contest with the Defendant in the Suit, the Suit was decreed in favour of the Plaintiff.



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5. It is brought to the notice by the learned Counsel for the Petitioner/third party in the E.P that the Slum Clearance Board/D-2 had filed written statement denying each and every averments in the Plaint and stating that the Plaintiff had not approached the Court with clean hands. In the same written statement, it has been clearly stated that the first Defendant is in the occupation of the premises, the Suit property in O.S.No.1398/2005 as allotted by the Slum Clearance Board. Therefore, the Plaintiff cannot seek such declaration. However, after amendment of the Plaint by the Plaintiff, the Suit was decreed. The Petitioner herein who is in enjoyment of the Plot No.288 had suffered a decree behind her back by ulterior motive or abuse of process of Court by the Plaintiff in O.S.No.1398/2005. Therefore, when the Petitioner came to know about the Execution Proceedings, she had filed E.A. No.02/2023 to attach her valuable right by impleading herself in the Execution Proceedings. The learned Counsel for the Revision Petitioner had invited the attention of this Court to the Order of the learned XXV Assistant Judge, City Civil Court, Chennai, observing as follows:

“E.P.No.633/2016 – Petition filed by abstractors checked and found defects. Hence returned. E.A.No.01/2023 and E.A.No.02/2023 – is allowed. Police aid and remove the



obstruction Order. Fresh delivery by 04.03.2023. Batta in 2 weeks. E.A.No.01/2023 – Heard records perused. As per the bailiff report dated 12.01.2023, it is clear that obstruction made by third party in E.P. Scheduled property. While the bailiff has attempt to execute the warrant thus necessary Police aid is necessary for proper execution of Warrant. Sufficient reason found. In fine this Petition is allowed and hereby direct Inspector of Police L and O B1 Villivakkam Police Station, Chennai to provide bailiff for executing of Warrant. No costs. E.A.No.02/2023 – Heard the Petitioner side. Records perused. As per the bailiff report dated 12.01.2023, it is clear that when the bailiff went to schedule mentioned property for executin of Warrant, one Parvathy wife of Damotharan, was objected that she is owner of the property and she is living in the Suit property from 1996. Further the bailiff stated the said obstruct or Parvathy has gave objection letter along with copy of Adhar card, Ration Card, Water tax Card and E.P card. On perusal of record in clear that the letter dated 05.02.2023, gave by Parvathy contains her address as number 68, 2nd Street, Bharathi Nagar, Villivakkam, Chennai 49. The Adhar Card reveals the address as 183/68 Bharathi Nagar, 2nd Street, Villivakkam, Chennai. Similarly ration card property tax card, Water tax card also mentioned the address as 16/183, Bharathi Nagar, 2nd Street, Villivakkam, Chennai. Here the case in hand the E.P schedule the Address as door number 68, Plot no.288,



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Warrant of delivery also issued in the address as door number 68, Plot No.288, Bharathi Nagar, Villivakkam, Chennai. Thus the objection made by obstruct or Parvathy is not sustainable. The property with mentioned in scheduled is totally different from the document produce by obstructor. Therefore, the removal of obstruction by J.D and other 3rd parties if any is absolute necessary for proper execution of Warrant. Sufficient reason found. Hence, this Petition is allowed and here by the bailiff authorized to remove the obstruction if any in E.P schedule property such as break open the Lock and necessary steps to ensure the identification of property with help of concern local VAO with records. No costs.”

5. Now, in pursuance of E.A.Nos.1 & 2/2023, the Plaintiff before the Execution Court along with Policemen are standing outside the house of the Petitioner herein/third party, who is not the contesting party in the Suit and the Plaintiff/decreed holder having obtained the Order behind the back of the Petitioner herein/third party, the Claim Petition by the Petitioner was returned as defective and is to be numbered. Therefore, if the Execution Proceedings in E.P.No.633/2016 in O.S.No.1398/2005 is not stayed, the valuable right of the Petitioner/third party in the E.P will be lost which cannot be compensated at any cost. It leads to miscarriage of justice.



Therefore, the learned Counsel for the Petitioner sought to grant leave of this Court.

Accordingly, leave is granted.

01.03.2023

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Note: Registry is directed to number the Petition, if it is otherwise in Order.



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