



CRP No.1279 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM

THE HONOURABLE Dr.JUSTICE **D.NAGARJUN**

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and

CMP.No.8630 of 2023

V.Subramaniam (Died)

V.Krisnasamay

... Petitioner

-Vs-

1. Arulmigu Varadaraja Perumal Thirukovil
Rep. by its Thakkar,
Arepalayam, Udumalpet,
Tiruppur District.
2. V.Mani
3. A.Sheik Bagadur
4. S.Saraswathy
5. N.Chinnathai
6. The Office of the Sub-Registrar,
Udumalpet.
7. S.Remma
8. S.Prasath

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the docket order dated 31.03.2023 made in unnumbered E.A. in E.A.C.F.R.No.1344 of 2023 in EP.No.67 of 2018 in O.S.No.123 of 2008 on the file of Subordinate Judge, Udumalpet and further



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direct the learned subordinate Judge, Udumalpet to number the petition in unnumbered E.A. in E.A.C.F.R.No.1344 of 2023.

For Petitioner : Mr.S.Arjun

ORDER

Heard the learned counsel for the revision petitioner. Perused the records.

2. This Civil Revision Petition is filed aggrieved by the return endorsement dated 31.03.2023 of unnumbered EA in E.A.C.F.R.No.1344 of 2023 in EP.No.67 of 2018 in O.S.No.123 of 2008 on the file of the Subordinate Court, Udumalpet.

3. It is submitted by the learned counsel for the revision petitioner that O.S.No.123 of 2008 filed by the respondent seeking for declaration of title and for mandatory injunction. The said suit was decreed against the petitioner and the petitioner preferred A.S.No.47 of 2017 originally before the District Judge, Tirupur and the same was transferred to III Additional District Court, Dharapuram. Subsequently, without giving notice of the parties to the



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appeal, the said Appeal Suit stated to have been transferred to the Additional District Court, Udumalpet, which was subsequently, dismissed for non-prosecution. On coming to know about the dismissal, the petitioner said to have filed I.A.No.45 of 2023 for condoning the delay of 82 days in preferring the petition for restoration of appeal. In the meanwhile, the respondent has filed EP.No.67 of 2018 seeking execution of decree in O.S.No.123 of 2008. Since the execution is ordered, the petitioner stated to have filed E.A.C.F.R.No.1344 of 2023 seeking stay of execution on the ground that he has preferred an application before the Appellate Court for restoration of the appeal in A.S.No.47 of 2017, which was dismissed for default. The execution Court stated to have been returned the said petition without numbering.

4. The petitioner should have filed the application for stay of execution of decree before the learned V Additional District Judge, Udumalpet, where a petition for restoration of A.S.No.47 of 2017 is pending. During the course of hearing, the learned counsel for the petitioner requested the Court to permit him to withdraw this petition so that he can file a fresh application before the learned V Additional District Judge, Udumalpet seeking the relief of stay of



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execution in EP.No.67 of 2018 on the file of the learned Subordinate Judge,
Udumalpet.

5. Accordingly, the petitioner is permitted to withdraw the present Civil Revision Petition with liberty to approach this Court in case if the relief sought for by the petitioner is declined by the learned V Additional District Judge, Udumalpet.

6. This Civil Revision Petition is dismissed as withdrawn. There shall be no order as to costs. Consequently, connected CMP is also closed.

21.04.2023

kmi

To

1. The V Additional District Court,
Udumalpet.
2. The Subordinate Court,
Udumalpet.



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Dr.D.NAGARJUN, J.

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