



CRP.No. 1587 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM

THE HON'BLE JUSTICE MRS.V.BHAVANI SUBBAROYAN

CRP.No. 1587 of 2023

and

CMP.No. 10389 of 2023

T.Pandurangan

... Petitioner

Versus

Sri Kannabiran Temple
Represented by its Hereditary Trustee
M.Jayaraman

... Respondent

Prayer: Civil Revision Petition filed Under Section 115 of the Civil Procedure Code, praying to set aside the docket order dated 03.03.2023, in EA.SR.No.15886 of 2023 in E.P.No.4011 of 2019 in O.S.No.1513 of 2001 on the file of the learned IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.A.D. Janarthanan
For Respondent : Mr.R. Manickavel



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ORDER

This Civil Revision Petition has been filed seeking to set aside the docket order in EA.Sr.No.15886 of 2023 in E.P.No. 4011 of 2019 in O.S.No. 1513 of 2001, dated 03.03.2023 on the file of IX Assistant Judge, City Civil Court, Chennai.

2. The revision petitioner herein is the defendant and the respondent is the plaintiff in the original suit.

3. The facts of the case is that the respondent/plaintiff filed the suit in O.S.No. 1513 of 2001 before the IX Assistant City Civil Court, Chennai, directing the defendant to vacate and deliver the vacant possession of the schedule “B” mentioned land after removing the superstructure put up by him and directing the defendant to pay the arrears of rent in a sum of Rs.2,030/- to the respondent/plaintiff and directing the defendant to pay the damages for use and occupation at Rs.100/- per month from 01.12.2000 till the date of recovery of possession from the defendant.



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4. The defendant contested the suit by filing written statement denying all the averments made in the plaint. After perusing the records, the Court below decreed the suit by judgment and decree dated 31.01.2008 in favour of the plaintiff. Aggrieved by the said judgment and decree, the defendant has preferred an appeal in A.S.No. 291 of 2010 before the learned II Additional Judge (Full Additional Charge of I Additional Court) and the appeal was also dismissed by judgment and decree dated 05.11.2016 holding that the judgment and decree of the Court below regarding the “B” schedule property was modified with respect to the survey number and the relief of recovery of possession was granted to the respondent/plaintiff in respect of Survey No. 17/part marked as “A-B-C-D” in Surveyor Plan 2 in Ex.C1 series and the appeal was dismissed. The appellant/defendant shall hand over the vacant possession of the survey number 17/part marked as “A-B-C-D” in Surveyor Plan 2 in Ex.C1 Series after removing the thatched roof and that the appellant/defendant shall pay compensation of Rs.35/- per month from February, 1996 till the date of delivery of vacant possession in respect of the said property to the respondent/plaintiff. Time of two months was also granted for delivery of vacant possession of the said property.



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5. Challenging the Judgment and Decree dated 05.11.2016, the defendant has filed Second Appeal in S.A.No. 311 of 2017 before this Court and the same was also dismissed by confirming the judgment and decree dated 31.01.2008 passed by the Court below. Aggrieved by the said orders, the respondent/plaintiff has filed E.P.No. 4011 of 2019 before the IX Assistant City Civil Court, Chennai, seeking to vacate and hand over the vacant possession of the schedule mentioned property to the plaintiff. During the pendency of the execution proceedings, the defendant has filed an E.A.Sr.No.15886 of 2023 prays to appoint Taluk Surveyor for accompanying the bailiff to identify the correct “B” schedule property, which is under the temple's property in Survey No. 17 for executing the above EP. After scrutinizing the relevant records, the same was rejected at the SR stage itself by order dated 03.03.2023. Aggrieved by the said order, the petitioner/defendant has come forward with the present Civil Revision Petition.

6. The petitioner who is a judgment debtor repeatedly approached Court to defeat the judgment and decree won by the respondent herein, which was also confirmed by this Court in S.A.No.311 of 2017. When the respondent/temple



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sought to execute the decree and recover the land after demolishing the super structure put up by the petitioner, the petitioner is constantly approaching Court with one application after the other, to evade handing over of possession of the suit property.

7. The respondent/temple initiated a suit in O.S.No.1513 of 2001 for delivery of possession for directing the petitioner herein to deliver the vacant possession after removing the super structure put up by him.

8. The petitioner herein contested the suit by filing written statement. After full fledged trial, the Trial Court decreed the suit in favour of the respondent/temple. As against the said judgment and decree, the petitioner herein preferred an Appeal in A.S.No.291 of 2009 before the learned Principal Judge, City Civil Court, Chennai. The said suit was dismissed. As against the same, the petitioner approached this Court by filing a Second Appeal in S.A.No.311 of 2017 and the said Appeal was also dismissed. Thereafter, the petitioner has not filed further Appeal. Therefore, the matter has reached quietus. The respondent/temple having won the Suit, First Appeal and Second Appeal, sought to execute the



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decree obtained in its favour. However, the petitioner has been repeatedly filing one petition after other to evade granting of possession to the respondent/temple.

The petitioner had earlier filed a petition in O.S.No. 1513 of 2001, in E.A.SR.No.50690 of 2022 in E.P.No.4011 of 2019. The learned IX Assistant Judge, City Civil Court, Chennai, dismissed the said application vide a docket order. The same was challenged by the petitioner before this Court by way of filing a Civil Revision Petition in C.R.P.No.3882 of 2022. The learned Judge of this Court, dismissed the said Civil Revision Petition vide order dated 28.11.2022 holding that points which were raised in the suit and confirmed in the Second Appeal cannot be re-agitated by way of filing of an application under Section 47 of the C.P.C., and dismissed the Civil Revision Petition. Then again the petitioner has filed another application in E.A.SR.No.15886 of 2023 in E.P.No.4011 of 2019 in O.S.No.1513 of 2001 under Section 47 of C.P.C. The said application was dismissed by the learned IX Assistant Judge, City Civil Court, Chennai, vide docket order dated 03.03.2023 and the same was challenged in this Civil Revision Petition.

9. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the entire material placed on record.



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10. The petitioner has not brought any new facts before this Court and the learned counsel has only tried to canvass the same points that were raised before the Trial Court and Appellate Court. This Court has dismissed the Second Appeal filed by the petitioner. The learned Judge of this Court while rejecting the Civil Revision Petition filed by the petitioner earlier, has categorically held that it is settled law that the points which were raised in the suit and confirmed in the Second Appeal cannot be re-agitated by way of filing an application under Section 47 of the C.P.C and dismissed the Civil Revision Petition. Now the petitioner is only attempting to raise the very same points in this Civil Revision Petition also. Hence this Court is not inclined to grant any relief to the petitioner at this juncture. This Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Internet: Yes/No
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To
1. The IX Judge, City Civil Court, Chennai.

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V.BHAVANI SUBBAROYAN, J.

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