



WEB COPY



CRP No.2798 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2798 of 2019
and CMP.No.18329 of 2019

Noor Mohammed Sahib (Died)

- 1.Fathimuthu Beevi
- 2.K.N.Dhul Bhaar Ali
- 3.K.N.Mohammed Meeran (Died)
- 4.Bhasheer Ahamed
- 5.M.Hairunisha
- 6.D.Thahira
- 7.S.Inulmarjan
- 8.N.Tholath Mariam
- 9.Anisha Beevi
- 10.Minor Fargees Banu
- 11.Minor Murshitha Banu

..Petitioners

[Petitioner 9 appointed as guardian to minor petitioners 10 and 11 vide order dated 29.11.2022 made in CMP No.15090 of 2021 in CRP.No.2798 of 2019 and 3rd petitioner died, petitioners 9 to 11 B/R as Lrs of the deceased P3 viz Mohammed Meeran vide order dated 29.11.2022 made in CMP.No.15086 of 2021 in CRP.No.2798 of 2019]

Vs.

Selvakumar

..Respondent



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Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to set aside the order and decreetal order dated 04.01.2018 passed by the District Munsif Judge, Madurantakam, Kanchipuram District, dismissing E.A.No.108 of 2018 in E.A.No.47 of 2015 in E.P.No.156 of 1996 in O.S.No.25 of 1958 and allow the above E.A.No.108 of 2018 by allowing this CRP.

For Petitioners : Mr.N.Nagu Sah

For Respondent : Mr.K.Govi Ganesan

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 04.01.2018 passed by the District Munsif Judge, Madurantakam, kanchipuram District, dismissing E.A.No.108 of 2018 in E.A.No.47 of 2015 in E.P.No.156 of 1996 in O.S.No.25 of 1958, thereby dismissing the petition filed by the petitioner under Order XIII Rule 3 of CPC to reject the incomplete disputed xerox copy of the affidavit marked as Ex.P-29 in E.A.No.47 of 2015.

2. The petitioner is the decree holder who filed an execution petition for delivery of possession in respect of the suit property. The respondent is a third party to the suit, who filed a claim petition in E.A.No.47 of 2015 thereby claiming title over the suit schedule property. He filed another application in E.A.No.178 of 2017 for reception of some documents including xerox copy of



an incomplete affidavit purported to have been signed by him and other petitions are alleged to have been served on his counsel by his Advocate Clerk in O.S.No.52 of 2006. However, it was refused to be admitted as the disputed affidavit, but permitted him to file other documents which is subject matter of E.A.No.178 of 2017.

3. Thereafter, the respondent filed another application in E.A.No.212 of 2017 in E.A.No.47 of 2015 directing the petitioners to produce some documents related to judgment and decree passed in O.S.No.52 of 2006 and E.P.No.26 of 2009. It was allowed by the Execution Court. Aggrieved by the same, the petitioner preferred civil revision petition before this Court in CRP.No.2837 of 2018. This Court, by an order dated 11.10.2018, set aside the order passed in E.A.No.212 of 2017 and permitted the respondent to produce such of the documents which he intended to produce before the Execution Court.

4. Thereafter, the Execution Court received and marked the disputed affidavit as Ex.P-29 in E.A.No.47 of 2015 which was already refused to admit from marking the disputed document. It was not the subject matter of the E.A.No.212 of 2017. However, the Execution Court erroneously received and



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marked the said affidavit which is inadmissible in evidence since it is only a Xerox copy. It is also an incomplete affidavit and its authenticity was disputed by the petitioners herein. That apart, the Execution Court misconstrued the order passed by this Court and allowed the petition. Therefore, this Court finds infirmity or illegality in the order passed by the Court below and it is liable to be set aside.

5. Accordingly, the fair and decreetal order dated 04.01.2018 passed in E.A.No.108 of 2018 in E.A.No.47 of 2015 in E.P.No.156 of 1996 in O.S.No.25 of 1958 on the file of the District Munsif Judge, Madurantakam, Kanchipuram District, is hereby set aside.

6. In the result, the civil revision petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.01.2023

Speaking/Non-speaking order
Index : Yes/No
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G.K.ILANTHIRAIYAN.J.



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To

The District Munsif Judge,
Madurantakam, Kanchipuram District.

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11.01.2023