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CRP(NPD).No..2016 of 2019
and C.M.P.No.13064 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

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and C.M.P.No.13064 of 2019

1.J.Babulal
2.J.Ashok Kumar
3.J.Sovanlal
4.Nirmala
5.Prakash
6.Sangeetha

.. Petitioners

Vs.

1.Nizar Ali
2.Nousath Ali
3.KhajaMohidueen
4. Nizammudin
5.Abudhageer

.. Respondents

PRAYER :Civil Revision Petition filed under Section 227 of the Constitution of India, praying to strike off all proceedings pertinent to the E.A.No.81 of 2018 in E.P.No.263 of 2008 in R.C.O.P No.71 of 1987 pending on the file of the Additional District Munsif Court at Vellore and to strike of the same.



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For Petitioners : Mr.M.Prabhakar
For R1 to R4 : Mr.C.Jagadish
For R5 : Mr.J.Pravin

ORDER

This Civil Revision Petition has been filed by the decree holder against entertaining of E.A.No.81 of 2018 in E.P.No.263 of 2008 in R.C.O.P.No.71 of 1987, on the file of the Additional District Munsif Court, Vellore.

2.The father of the petitioners herein filed R.C.O.P.No.71 of 1987 under section 10(2)(1)(iii) and (vii) of the Tamilnadu Buildings (Lease and Rent Control) Act, 1980 for eviction. According to the petitioners, they are the landlords and the first respondent is the tenant. Pending the said R.C.O.P, the father of the petitioners/landlord died and the petitioners herein were impleaded as parties. The R.C.O.P was dismissed by the Trial Judge. The second respondent therein remained *ex-parte* in the said proceedings.



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3. Against the dismissal of R.C.O.P, a Rent Control Appeal was preferred before the Rent Control Appellate Authority in R.C.A.No.2 of 2006. The said R.C.A was allowed, ordering eviction. Against the said order of eviction in R.C.A.No.2 of 2006, a Civil Revision Petition was preferred by the 5th respondent herein in CRP.(NPD).No.2143 of 2009. The said C.R.P was dismissed by this court on 18.12.2017. The C.R.P preferred only by one Abudhageer/the 5th respondent herein. The second respondent therein remained *ex-parte* in the R.C.O.P and did not contest R.C.A order or prefer a revision against the order of eviction and thereby, the order passed in the revision, attained finality.

4. After C.R.P had been dismissed, in order to take possession of the property, E.P.No.263 of 2008 which had been filed based on the order of eviction passed by the Sub-Court, Vellore, was revived. The legal representatives of the deceased second respondent in R.C.O.P, filed an application in E.A.No.81 of 2018 to obstruct the decree. A counter has been presented in the said E.A. Despite the same, the matter has been adjourned



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from time to time without any disposal. Aggrieved by the same, the present CRP has been presented.

5.I have heard the learned counsel for the petitioners and the respondents and carefully gone through the records.

6.A petition for obstruction under Order 21 Rule 97 CPC at the instance of the third party is not maintainable. This position has been settled by this Court in the case of “***Donna Rossi Kitchen Line vs.D.Harikrishna***” reported in **2014 (2) CTC 690**, wherein, it has been held that a third party cannot maintain application under Order 21 Rule 97 CPC by claiming himself as an obstructor. A bare reading of the provision shows only a decree holder or an auction purchaser can file a petition for removal of obstruction. The view taken in the said judgment was followed in ***M.Gopinatan Pillai vs. K.Radhakrishnan***, reported in **2014 SCC Online Mad 8828**.



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7. Applying this judgment, this Court has to hold that a petition under Order 21 Rule 97 CPC can be presented by the decree holder or by purchaser of the immovable property in execution. This is a purport of Order 21 Rule 97 CPC. The right of the third party to move an application arises only when he has dispossessed of the property under Order 21 Rule 99 CPC.

8. Admittedly, in this case, the petitioners in E.A.No.81 of 2018 are third parties and they cannot maintain an application under order 21 Rule 97 CPC. They are neither decree holder nor the purchaser of the property in execution. Infact, though they claim to be third parties, they cannot be treated as third parties because they are the legal representatives of the deceased 2nd respondent in R.C.O.P. Hence, the petition is not maintainable and the same is liable to struck off. Accordingly, the petition filed under Order 21 Rule 97 CPC by the respondents herein is struck off and the present Civil Revision Petition stands allowed. No cost. Consequently, connected miscellaneous petition is closed.



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9.The Execution Court is directed to execute the decree and ensure that the decree holder gets the fruits of the order obtained from this Court within a period of two months from the date of receipt of a copy of this order. In any event, on or before 29.09.2023 and report to this Court on 30.09.2023.

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No

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