



C.R.P.No.3849 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:
THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

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Chinnaponnu ... Petitioner

-Vs-

1. Raniammal
2. R.Balakrishnan ... Respondents

Prayer : Civil Revision Petition is filed under Sec.115 of Civil Procedure Code, praying to set aside the dismissal order dated 20.10.2022 passed by the Hon'ble Sub-Judge at Tiruttani in E.A.No. 1 of 2021 in unnumbered E.P.No.of 2018.

For Petitioner : Mr.L.Ramu

ORDER

Challenging the impugned order passed in E.A.No.1 of 2021 in unnumbered E.P.No.of 2018 by the learned Sub-Judge, Tiruttani, the Revision Petitioner/Petitioner preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the



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trial judge, notice to the respondents is dispensed with.

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3. Before the trial court, the Revision Petitioner filed a suit in O.S.No. 90 of 2005 against the respondents/defendants for the relief of specific performance. The defendants also contested the suit and a decree was granted in her favour. Thereafter, to execute the sale deed, she initiated execution proceedings in E.P.No.10 of 2011, as the defendants failed to do the same, the sale deed was executed through court on 02.08.2017. Thereafter, she filed an Execution Petition for delivery of possession on 28.10.2018, but the same was returned by the executing court for want of certain particulars. In the meanwhile, the revision petitioner handed over the petition to her counsel, but he has not properly complied the returns, however, due to covid-9 pandemic, the said Execution Petition was not represented. So, there was a delay of 841 days arose in representing the said Execution Petition. Hence, to condone the said delay, she filed an application E.A.No.1 of 2021, in which notice was given to the respondents. They have also appeared and submitted their objections. On considering both side submissions, the executing court dismissed the application stating that the suit was decreed in the year of 2018 and the earlier Execution Petition was filed and the sale deed was



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executed through court of law, thereby the prayer in the said execution petition was terminated, as such, the present Execution Petition is not maintainable. Aggrieved over the same, the present Civil Revision Petition has been filed.

4. The learned counsel for Revision Petitioner would submit that the earlier Execution Petition filed by her for execution of sale deed, as the defendants failed, through court of law the sale deed was executed. Therefore, the said E.P. was terminated, since because the prayer in the said petition only to execute the sale deed. Thereafter, he filed the present E.P. for delivery of possession. Instead of taking the petition on file, the trial judge erroneously dismissed the same stating that the earlier E.P. was terminated. Therefore, he prayed to set aside the findings of the trial judge.

5. On perusal of records, it reveals that the sale deed was executed in favour of Revision Petitioner through court of law in the earlier Execution Petition on 02.08.2017 and the prayer in that E.P. is only to execute the sale deed, thereby after execution of sale deed, the said Execution Petition was terminated. Now, for getting delivery of the property, the revision petitioner/decreed holder filed the present Execution Petition, but the executing court erroneously dismissed the application as



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it is not maintainable, which shows his non-application of judicious mind.

Therefore, the findings of the executing court is liable to be set aside.

Accordingly, this Civil Revision Petition is allowed and the findings rendered by the executing court in E.A.No.1 of 2021 in unnumbered E.P.No.....of 2018 is set aside. The plaintiff is entitled to file a fresh Execution Petition for delivery of property and the reasons assigned for the delay is condoned. The Executing Court is directed to take the Execution Petition on file and dispose the same as per manner known to law. No costs.

18.10.2023

Index : Yes/No

Speaking Order : Yes/No

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To

The Sub-Judge, Tiruttani.

T.V.THAMILSELVI, J.



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