



C.R.P. Nos.4034 & 4038 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.4034 & 4038 of 2023
and
C.M.P. Nos. 24673 & 24678 of 2023

1. Uppili @ Uppili Murugan
2. Banumathi

... Petitioners in
both C.R.P.s

Vs

Manivannan

... Respondent in
both C.R.P.s

PRAYER in C.R.P.No. 4034 of 2023 : Civil Revision Petition is filed under Art.227 of Constitution of India, praying to set aside the fair and decreetal order dated 18.04.2023 passed in E.A.No.2 of 2022 in E.P.No.4 of 2019 in O.S.No.23 of 2013 on the file of Principal District Judge, Tiruvarur.



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PRAYER in C.R.P.No. 4038 of 2023 : Civil Revision Petition is filed under Art.227 of Constitution of India, praying to set aside the fair and decreetal order dated 18.04.2023 passed in E.A.No.3 of 2022 in E.P.No.4 of 2019 in O.S.No.23 of 2013 on the file of Principal District Judge, Tiruvarur.

For Petitioners in
both C.R.P.s : Mr.D.Thirumoorthy

COMMON ORDER

Challenging the impugned orders passed in E.A.Nos.2 and 3 of 2022 in E.P.No.4 of 2019 in O.S.No. 23 of 2013 passed by the learned Principal District Judge, Tiruvarur, the revision petitioners/judgment debtors preferred these Civil Revision Petitions.

2. Since the relief claimed challenging the impugned orders passed by the trial judge, notice to the respondent is dispensed with.

3. Before the trial court, the Revision Petitioners are the defendants in the suit in O.S.No. 23 of 2013 filed by the respondent/plaintiff seeking for the relief of recovery of possession. In that suit, the revision petitioners/defendants were called absent, so, the trial judge passed an order



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of exparte decree on 30.01.2015. In fact, the 1st defendant and plaintiff are brothers and there was a panchayat held on the advise of elders, thereby the plaintiff agreed not to cause interference to the defendants' enjoyment in the suit property viz., house property. Due to the settlement, the defendants have not followed the suit proceedings. But, the plaintiff after obtaining an exparte decree initiated execution proceedings in E.P.No.4 of 2019 to execute the decree. Based on that, delivery was also ordered. Now, having came to know about the exparte decree, the defendants filed an application to set aside the exparte decree, but there is a delay of 2721 days. So, they have filed an application in I.A.No.1 of 2022 to condone the delay and subsequently, that application was dismissed for default. However, in the execution application, order of delivery was passed. Hence, the Revision Petitioners filed an application in E.A.No. 3 of 2022 under Sec.47 of C.P.C. stating that the exparte decree obtained by the plaintiff as such is inexecutable and prayed to dismiss the Execution Petition. They have also filed another application in E.A.No.2 of 2022 praying to grant an order of interim stay. On hearing both side submissions, the Executing Court held that the defendants have already taken steps to set aside the exparte decree



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before the trial court by filing condone delay application and in the said circumstances, the relief claimed in the aforesaid applications became infructuous, thereby both applications were dismissed. Challenging the said findings, the Revision Petitioners/Judgment debtors preferred these Civil Revision Petitions.

4. The learned counsel for Revision Petitioners would submit that to set aside the exparte decree, they have filed an application in I.A.No.1 of 2022 to condone the delay under Sec.5 of Limitation Act and now it was restored. Now, the case is posted for hearing on 18.01.2024. However, the Execution Petition in E.P.No.4 of 2019 is posted for delivery on 19.12.2023. Admittedly, as per the affidavit filed before the trial court, by disputing the exparte decree, the Revision Petitioners have filed the said application under Sec. 47 of C.P.C., on the other hand, they took steps to set aside the exparte decree by filing condone delay application under Sec.5 of Limitation Act in I.A.No.1 of 2022. So, the observation made by the Executing Court is well reasoned, which needs no interference. Therefore, both the Civil Revision Petitions are dismissed. However, on seeing the records, it reveals that the trial court posted the application filed under Sec.5



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of Limitation Act for hearing on 18.01.2024, but before that, the Executing Court had posted the application for delivery on 19.12.2023. In the said circumstances, if the warrant is executed, it will lead to miscarriage of justice. Therefore, till the disposal of I.A.No.1 of 2022, which is posted for enquiry on 18.01.2024, the respondent/plaintiff is directed not to pay batta in the execution proceedings in E.P. No.4 of 2019. The trial judge is directed to dispose the I.A.No.1 of 2022 in O.S.No.23 of 2013 within a period of four weeks from 18.01.2024 on merit. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

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Index : Yes/No
Speaking Order : Yes/No
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To

Principal District Judge,
Tiruvarur.



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T.V.THAMILSELVI, J.

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