



CRP(NPD).No.3797 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM

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

CRP(NPD).No.3797 of 2023
and CMP.No.23578 of 2023

N.Perumal

...Petitioner

Vs.

Jayanthi

...Respondent

PRAYER: This Civil Revision Petition is filed under Article 115 of the Constitution of India, praying to set aside the order passed in E.A.No.83 of 2022 in E.P.No.40 of 2019 in O.S.No.105 of 2018 dated 02.02.2023 on the file of the District Munsif Court, Arakkonam.

For Petitioner : Mr.M.Haribabu

For Respondent : Mr.M.Venkadesh kumar

ORDER

Challenging the order dated 02.02.2023 passed by the District Munsif Court, Arakkonam, in E.A.No.83 of 2022 in E.P.No.40 of 2019 in O.S.No.105 of 2018



2. Before the Executing Court, the revision petitioner filed E.A.No.83 of 2022 under Order 21 Rule 106 of CPC., prayed to set aside the ex-parte order passed dated 18.12.2019 in E.P.No.40 of 2019. The revision petitioner stated that having only 330 sq ft of plot and put a hut house in the property and residing along with his wife but the respondent/deGREE holder has obtained a decree attempted to take away his property. In fact, the petitioner is illiterate and he has not received any summons from the Court. Thereafter, he filed an application to set aside the ex-parte decree. The said petition was strongly objected by the plaintiff stating that proper summons was served on the petitioner/defendant however, he did not appear before the court, thereafter, the Executing Court had passed the order of eviction. On hearing both sides, the trial Court had dismissed the petition, holding that the petitioner has filed this Execution Appeal without proper reason. Challenging the same, the petitioner/defendant has filed this Civil Revision Petition.

3. The learned counsel for the revision petitioner submitted that the trial Court failed to note that the suit schedule property belongs to the plaintiff's wife and ignored the fact that allotted the revenue records were in the name of the plaintiff's wife. He further submitted that summons was not served on the



petitioner in the suit and an ex parte decree was passed by the trial Court is not justifiable. He further submitted that the petitioner is illiteracy and he has not received any summons from the other side. He further submitted that the petitioner has valid defence to prove his case. Hence, he prayed to allow this petition.

4. The learned counsel for the respondent submitted that the trial court had issued notice to the petitioner however, he has not appeared before this Court, thereafter, the Execution Court had passed the order. Hence, the trial Court had rightly appreciated facts and dismissed the EA as such is permissible. Hence, he prayed for dismissal of this petition.

5. On a perusal of records, it reveals that before the trial court the plaintiff was examined and other witnesses were examined. Hence, this Court considered the view of that if the opportunity is not given to the petitioner who is illiterate, his valuable right of his defence will be defeated. Therefore, the order passed by the Executing Court in E.A.No.83 of 2022 dated 02.02.2023 is hereby set aside and condition that the petitioner is directed to file counter objection within a period two weeks from the date of receipt of copy of this order. Further, the



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Executing Court is directed to dispose of E.P. on merits within a period of four weeks from the date of receipt of a copy of this order.

6. In view of the above directions, this Civil Revision Petition is disposed of . Consequently, connected miscellaneous petition is closed.

20.11.2023

Speaking / Non Speaking order
Neutral Citation : Yes/No
Index : Yes/No
msrm



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To

1. The District Munsif Court, Arakkonam.
2. The Section Officer,
VR Section,
High Court of Madras



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T.V.THAMILSELVI.J,

msrm

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