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C.R.P.No.2850 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

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

C.R.P.No.2850 of 2022

and

C.M.P.No.15424 of 2022

Shanthi

... Petitioner

-Vs-

The South Arcot Diocesan Corporation

Rep.by its Secretary

Fr.L.A.Arulpushpam

St.Agnes Seminary

No.4, Beach Road, Cuddalore-1.

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the decretal and fair order in E.A.No.311 of 2018 in E.P.No.4086 of 2014 passed by the Hon'ble XXVIII Assistant City Civil Court at Chennai dated 16.08.2022.

For Petitioner : Mr.T.T.Ravichandran

For Respondent : No appearance



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ORDER

The Revision Petitioner herein is the 5th defendant in the suit in O.S.No.1288 of 2009 on the file of learned XVII Asst. Judge, City Civil Court, Chennai, which was filed by the respondent/plaintiff for the relief of recovery of possession.

2. Initially, the suit was filed against one Kothandaraman and after his death, his legal heirs are impleaded in the suit. The Revision Petitioner viz., Shanthi is added as one of legal heir of deceased defendant in the suit in O.S.No.1288 of 2009. In that suit, the defendants were remain exparte and based on the exparte decree, the respondent/decreed holder initiated execution proceedings in E.P.No.4086 of 2014. During the pendency of the said execution proceedings, the 5th defendant filed an application in R.E.A.No.311 of 2018 under Order 21 Rule 10 (3) of C.P.C. praying the court to set aside the exparte order passed on 19.01.2015. In that application, he contended that proper notice was not served on them and in fact, the original suit proceedings was followed by her parents viz., Defendants 1 and 2. However, during the pendency of proceedings, both of them were died, but due to lack of communication, as legal heirs, they



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were not able to follow the same. When they came to know about the exparte order passed in the execution proceedings, immediately she filed an application to set aside the exparte order passed on 19.01.2015 and also prayed to conduct the suit by setting aside the exparte order. The said application was objected by the plaintiff stating that to drag on the proceedings, they have wantonly filed the said application and the starting point of the limitation as pointed out by the revision petitioner to file this application is also not sufficiently explained. Having filed the application by the 5th defendant during the execution proceedings, they were aware of the nature of execution petition, but they have filed this application by invoking Order 21 Rule 10(3) of C.P.C. as such is not permissible. Accordingly, that application was dismissed as there is no sufficient cause given to set aside the exparte order. Challenging the said order, the present Civil Revision Petition has been filed.

3. The learned counsel for Revision Petitioner argues that originally, the suit was filed by father of Revision Petitioner Kothandaraman and after his death, his mother/2nd defendant along with his legal heirs contested the suit and subsequently, she also died. But, during their life



time, they have alone followed the suit proceedings. Due to lack of communication, as legal heirs of defendant, they were not able to follow the suit proceedings in time. Subsequently, the decree holder initiated execution proceedings to execute the decree and in that proceedings also, proper notice was not served. Therefore, on coming to know about the execution proceedings with their knowledge, they have filed an application to set aside the exparte order, but the trial judge failed to appreciate entire facts and circumstances of the case and erroneously dismissed the same. Hence, he prayed to set aside the findings rendered in E.A.No.311 of 2018.

4. Records perused. On perusal of records, it would reveals that the suit was originally filed by the respondent herein for recovery of possession and much earlier on 19.01.2015 the defendant was set exparte. Thereafter, to execute the decree, the plaintiff filed the present Execution Petition. Admittedly, during the life time of the parents of the Revision Petitioner, they have followed the proceedings. Subsequently, mother of Revision Petitioner was also died as she was set exparte. So, based on the exparte decree, the plaintiff attempted to take possession of the property



and if opportunity is not given to the legal heirs of defendant to defend their case, then their valuable right to defend the property will be defeated.

However, notice was served on the side of respondent, but there is no representation on their side. So, the reasons assigned by the Revision Petitioner is justifiable one. Accordingly, this Civil Revision Petition is allowed and the findings of the executing court in E.A.No.311 of 2018 in E.P.No.4086 of 2014 is set aside and the E.A.No.311 of 2018 is ordered to be allowed. Furthermore, opportunity is given to the 5th judgment debtor to defend the execution proceedings. The Executing Court is directed to dispose the E.P.No.4086 of 2014 on merits within a period of four months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

09.10.2023

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

The XXVIII Assistant City Civil Judge, Chennai.



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