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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

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THE HON'BLE MRS.JUSTICE T.V.THAMIL SELVI

CRP.Nos.90 & 91 of 2022

and

CMP.No.536 of 2022

1. Visalatchi
2. Allirani
3. Jayalakshmi
4. Tamilselvi

... Petitioners in both CRPs.

Vs.

Swaminathan (Died)
rep. by LR's.

1. N.S.Nedunchezian
2. Siva (Died)
3. Sundarambal
4. Uma

(Respondents 3 & 4 are brought on record
as LR's of the deceased R-2 viz.Siva, vide Court
Order dated 30.08.2023 made in CMP.Nos.9616
to 9618 of 2022 in CRP.No.90 of 2022 and
CMP.Nos.9664,9667 & 9669 of 2022 in
CRP.No.91 of 2022 by VBSJ)

... Respondents in both CRPs.

Prayer in CRP.No.90 of 2022 : Civil Revision Petition filed under Section

115 of CPC to set aside the order dated 08.09.2021 passed in E.A.No.21 of



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2021 in E.A.No.347 of 2002 in E.P.No.77 of 1991 on the file of the II Additional District Munsif at Puducherry.

Prayer in CRP.No.91 of 2022 : Civil Revision Petition filed under Section 115 of CPC to set aside the order dated 08.09.2021 passed in E.A.No.22 of 2021 in E.A.No.347 of 2002 in E.P.No.77 of 1991 on the file of the II Additional District Munsif at Puducherry.

For Petitioners in both CRPs. : Mrs.Elizabeth Ravi

For First Respondent in both CRPs. : Mr.T.M.Naveen

For Second Respondent in both CRPs. : Died

COMMON ORDER

The petitioners have filed these revisions to set aside the order dated 08.09.2021 passed in E.A.Nos.21 & 22 of 2021, respectively in E.A.No.347 of 2002 in E.P.No.77 of 1991 on the file of the II Additional District Munsif, Puducherry.

2. Before the executing Court E.A.No.347 of 2002 was filed by the



decree holder to remove the obstruction and the same was dismissed for default along with E.P.No.21 of 2021 on 31.03.2015. Thereafter, the decree holder filed an application to restore the EP and not obstruction petition. Therefore, the 3rd party obstructor filed an application to restore the E.A.No.347 of 2002, but the same was dismissed by the executing Court stating that the Judgment Debtor has no right to restore the EA, and the 3rd party claim has no right to seek such direction to restore the E.A. No.347 of 2002 which was filed by the decree holder. Aggrieved by that order, the revision petitioner has preferred this Civil Revision petition.

3. The learned counsel for the revision petitioners submitted that in E.A.No.347 of 2002 already evidence were recorded and when it is posted for arguments the same was dismissed for default.

4. The learned counsel for the respondents / decree holders submitted that due to the pending of other proceedings, EP was allowed to dismiss for default on 31.03.2015 but subsequently now the EP is restored, as pointed out by the learned counsel for the revision petitioner the said E.A.No.347 of 2002 was not restored fixed by obstructions.



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5. By way of reply, the learned counsel appearing for the decree holder submitted that since the said EA was filed in the year 2002, considering the subsequent grievance, they proposed to file a fresh EA to remove the obstruction. But in fact, in E.A.347 of 2002 already evidence was recorded, when it is posted for arguments it was dismissed for default. Therefore, the 3rd party obstruction also needs to be decided in E.A.No.347 of 2002, before proceeding with E.P.No.77 of 1991, the decree holder ought to have filed an application to restore the E.A.No.347 of 2002, but they have failed. Therefore, they have rightly approached the Court, however the observation made by the Executing Court is well reasoned.

6. On seeing the fact that E.A.No.374 of 2002 is already ripe for arguments, this Court directs the revision petitioner to get on with E.A.No.347 of 2002, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the Executing Court is directed to proceed with the said E.A and dispose of the same on merits. Therefore, E.A.No.347 of 2002 is ordered to be restored on file. Liberty is granted to both the parties to



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adduce evidence and then the Executing court is directed to proceed with the matter in the manner known to law and dispose of the case within a period of three months from the date of receipt of a copy of this order.

7. Accordingly, these Civil Revision Petitions are disposed of. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

11.12.2023

Index : Yes/No
Speaking order / Non speaking order
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To

1. The II Additional District Munsif, Puducherry.
2. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMIL SELVI, J.

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