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C.R.P. No. 3610 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3610 of 2023

and

C.M.P.No. 22601 of 2023

1. P.Jeeva,
W/o. late Pal Patricks

2. Mrs.J.Princee,
W/o. Jawahar

... Petitioners

Versus

M.Somundeswari,
W/o. P.Mahalingam

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the judgment and decree in E.P.No.3811 of 2022 dated 07.07.2023 passed by the learned IX Asst. City Civil Court at Chennai.

For Petitioner : Mr.K.Balachandar



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ORDER

Challenging the impugned order passed in E.P.No.3811 of 2022 by the learned IX Asst. City Civil Court, Chennai, the Judgment Debtors/defendants preferred the present Civil Revision Petition.

2. Since the relief is claimed against the trial judge, notice to the respondent is dispensed with.

3. The learned counsel for Revision Petitioners would submit that before the trial court, proper notice was not served on to the 1st respondent and though she remain exparte, against her and another defendant, the trial court passed an exparte decree of money claim with interest in favour of respondent/plaintiff herein. To execute the same, she filed an Execution Petition in E.P.No. 3811 of 2022 for attachment of salary to recover the suit claim. Thereafter, she filed a petition to set aside the exparte decree, but the Executing Court passed an order as if the suit was contested by the defendants, but it is not a contested decree and it is only an exparte decree,



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thereby without giving opportunity to her, her salary was ordered to be attached. In fact, already her property was in possession and enjoyment of plaintiff, which was suppressed by her in the trial proceedings. Hence, he prayed to set aside the operation of the decree.

4. On perusal of records, it reveals that the suit in O.S.No. 2650 of 2017 was filed by the plaintiff for recovery of money against two defendants. Both the defendants remain exparte. Based on the exparte evidence, the decree was passed in favour of plaintiff. As pointed out by the Revision Petitioners' counsel, it is not a decree on contest, but on perusal of order passed by the Executing Court in E.P.No. 2811 of 2022, the learned trial judge made an observation as follows :-

“The JD had appeared before trial court through her counsel.

Hence, the decree is an contested decree.”

But, as discussed above, it is only an exparte decree and not a contested decree. However, on perusal of records, without application of mind, the trial judge passed the impugned order and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings of the



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trial judge in E.P.No.3811 of 2022 is set aside and the Executing Court is directed to proceed with Execution Petition by giving opportunity to the Judgment Debtors as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.10.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

N.B. :- Issue order copy on 06.10.2023

To

IX Asst. Judge,
City Civil Court,
Chennai.



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T.V.THAMILSELVI, J.

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