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C.R.P.Nos.4639 & 4651 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM:

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

C.R.P.Nos.4639 & 4651 of 2023

and

C.M.P.Nos.27652 & 27686 of 2023

V.Durairaj ... Petitioner in both CRPs

-Vs-

M.Lakshmanan ... Sole respondent in
C.R.P. No.4639 of 2023

Pakkirisamy (Died)

1.M.Lakshmanan
2.M.Panneerselvam ... Respondents in
C.R.P. No.4651 of 2023

Prayer in CRP 4639 of 2023 : Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the judgment and decree dated 25.07.2023 made in C.M.A. No.04 of 2019 in I.A. No.1148 of 2018 in O.S. No.84 of 2010 on the file of the Subordinate Court, Ulundurpet.

Prayer in CRP 4651 of 2023 : Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the judgment and



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decree dated 25.07.2023 made in C.M.A. No.03 of 2019 in I.A. No.871 of 2018 in O.S. No.83 of 2010 on the file of the Additional District Munsif, Ulundurpet.

In Both CRPs

For Petitioner : Mr.S.Mukunth, Senior Advocate
for Mr.R.Agilesh
For Respondents : Ms.AMalathi Devapriyam
(Caveator)

ORDER

Challenging the impugned orders passed in C.M.A.Nos.3 and 4 of 2019 in I.A.Nos. 1148 and 871 of 2018 in O.S.Nos.83 and 84 of 2010 passed by the learned Sub-Judge, Ulundurpet respectively, the Revision Petitioner/appellant preferred these Civil Revision Petitions.

2. The Revision Petitioner is the plaintiff in the suit in O.S.No.83 of 2010 and in another suit in O.S.No.84 of 2010, he is the defendant. Before the trial court, both suits ordered for joint trial and it is posted for evidence. But, due to giddiness and age factor, he was not able to attend the court. So, he was called absent and accordingly, the suit filed by him in O.S.No. 83 of 2010 was dismissed for default and the suit filed by the respondent in O.S.No.84 of 2010 was decreed. Now, based on the decree



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passed in O.S.No.84 of 2010, the respondent herein initiated execution proceeding in E.P.No.5 of 2019 in order to get recovery of possession of property from the Revision Petitioner. After receipt of notice in E.P., the Revision Petitioner filed an application to restore the suit in O.S.No. 871 of 2018, but the same was dismissed by the trial judge stating that purposely he is not cooperating with the proceedings. Challenging the said findings, the Revision Petitioner/appellant preferred this Civil Revision Petition.

3. Furthermore, in an another suit filed by the respondent for the relief of declaration and consequential relief of recovery of possession, he filed an application in I.A.No.1148 of 2018 praying to set aside the exparte decree and the same was dismissed by the trial judge stating that proper reason was not assigned. Against which, he preferred an appeal in C.M.A.No.4 of 2019 and the same was also dismissed confirming the order passed by the trial judge. Aggrieved over the same, the Revision Petitioner preferred this Civil Revision Petition.

4. The learned counsel appearing for respondent would submit that purposely to drag on the proceedings, he refused to enter into witness box, thereby the trial judge rightly proceeded with the suit filed by him and



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after the initiation of execution proceedings, now he came forward with the application without proper reason and the same was rightly considered by the trial judge. Hence, he prayed to dismiss this Civil Revision Petition.

5. Considering both side submissions and on perusal of records, on 11.01.2018 an exparte decree was passed against the Revision Petitioner. Now, to execute the decree, the respondent filed an Execution Petition in E.P.No.5 of 2019. Admittedly, both are close relatives and both parties are aged about 80 years. The respondent Lakshmanan filed a suit in the year of 1995 for declaration and recovery of possession against the Revision Petitioner herein. All these days, he is not able to get justice from the court. Due to non-communication of revision petitioner, he was not able to proceed with the trial. The learned counsel for Revision Petitioner would submit that before the trial court, he filed written statement. Considering the fact that since the matter is involved with the property, in order to give one more opportunity, this Court is inclined to set aside the findings of trial judge in in C.M.A.Nos.3 and 4 of 2019 in I.A.Nos. 1148 and 871 of 2018 in O.S.Nos.83 and 84 of 2010 and allowed both the applications. The Revision Petitioner is directed to cooperate with further proceedings and he is also directed to pay a sum of Rs.10,000/- as cost to the respondent's



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counsel within a period of two weeks from the date of receipt of copy of this order and on such payment, he is permitted to participate with the proceedings in both suits. The trial judge is directed to complete the joint trial within a period of two months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

11.12.2023

Index : Yes/No
Speaking Order : Yes/No
rpp

N.B. : Issue order copy on 18.12.2023

To

The Subordinate Judge, Ulundurpet.



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T.V.THAMILSELVI, J.

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