



CRP No.3671 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED :01.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.3671 of 2023

1. B.Ramu
2. P.Kumar
3. T.S.Lakshmi Narayanan
4. V.Priya
5. Anuradha
6. V.Jaiganesh
7. P.Elumalai

... Petitioners

Versus

- 1.Munusamy
- 2.Elumalai
- 3.Nagammal
- 4.Kuppammal
- 5.Kottiyammal
- 6.Rajendran
- 7.Kalyani
- 8.Aravi @ Dhanalakshmi
9. Valliyammal
10. Ponnammal
11. Kodhandan
- 12.Govindaraj
- 13.Durai
- 14.Rajaraman
- 15.Kistammal
- 16.Valliyamma
- 17.Nagammal
- 18.T.G.Baskar



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19. Kala
20. Ramadoss
21. Dhanalakshmi
22. Rekha
23. Seetha
24. Samuael
25. Suresh
26. Athilakshmi

...Respondents

Prayer: Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order dated 28.04.2023 passed by the Subordinate Judge of Thiruvallur in R.E.A.S.R. No.2115 of 2023 in E.P.No.35 of 2019 in O.S.No. 30 of 1992.

For Petitioners : Mr.Bijai Sundar

ORDER

Challenging the impugned order passed in R.E.A.S.R. No.2115 of 2023 in E.P.No.35 of 2019 in O.S.No. 30 of 1992 by the Subordinate Judge of Thiruvallur, the Revision Petitioner preferred this Civil Revision Petition.

2. Before the Trial Court, the respondent/plaintiff filed a suit in O.S.No. 30 of 1992, claiming partition against the defendants 1 to 17. The defendants 12 & 13, who are minors contested suit through their guardian and other defendants filed their written statement, but they are remained Ex-parte.

Based on the Ex-parte decree, the parties have initiated execution proceedings



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in E.P. 35 of 2019 before the Subordinate Court, Thiruvallur. During the pendency of the E.P., the claimants/revision petitioner, who are third parties filed an application under Order 21 Rule 97, 99 and Section 151 of CPC in R.E.A.S.R. No.2115 raised objections stating that the decree is inexecutable thereby the E.P.as such is not maintainable as per law and facts. Furthermore, as a bonafide purchaser of the property, he is entitled to resist the execution proceedings. That application was dismissed by the executing Court without taking the application on file by receiving the counter from the decree holder who raised objection stating that the claimants have no right to file the said application under Order 21, Rule 97, 99 and Section 151 of CPC.

3. The learned counsel for the revision petitioner would submit that one of the 9th defendant T.G.Baskaran, from whom they purchased the property and as the purchasers, they divided the property into plots and behind their back, the plaintiffs and defendants altogether filed a suit and obtained exparte decree. Based on the exparte decree, they initiated execution proceedings. Against which, the claimants have preferred a objection petition under Order 21 Rule 97, 99 and Section 151 of CPC, but the executing Court erroneously rejected the application. Furthermore, learned counsel of Revision Petitioner



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submits that before the trial Court, plaintiffs/deGREE holders not even produced title deed on their side to show their title over the property. So, if the exparte decree is executed, it will lead to miscarriage of Justice.

4. Accordingly, this Civil Revision Petition is allowed and the findings of Execution Court in docket order is R.E.A.S.R.No. 2115 of 2023 is set aside and the said application is ordered to be taken on file. The Trial Judge is directed to consider the application and dispose the same on merits within a period of three months from the date of receipt of copy of this order. No costs.

01.11.2023

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

To

1. The Subordinate Judge,
Subordinate Court,
Thiruvallur.
2. The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.



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