



CRP. No.3812 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

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

CRP. No. 3812 of 2023
& CMP No. 23637 of 2023

C.Neelavathi

...Petitioner

Vs

Sri Kasiviswanatha Swamy Devasthanam
is a Religious and Public Institution
represented by its hereditary Trustees
1.A.Vinayagam
2.A.Viswanathan
3.K.A.Natarajan

...Respondents

PRAYER : This Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the order dated 05.07.2023 passed in E.A No. 3195 of 2018 in E.P No. 2703 of 2017 in O.S No. 737 of 2014, filed under Section 47 of CPC, 1908 on the file of the learned IX Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.Sarathkumar



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For Respondent : Mr.M.A.Lakshmipathi

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ORDER

This petition has been filed to set aside the order dated 05.07.2023 passed in E.A No. 3195 of 2018 in E.P No. 2703 of 2017 in O.S No. 737 of 2014, filed under Section 47 of CPC, 1908 on the file of the learned IX Assistante City Civil Court, Chennai.

2. The petitioner herein filed E.A No. 3195 of 2018 in E.P No. 2703 of 2017 in O.S No. 737 of 2014, under Section 47 of CPC before the executing Court on the ground that the decree as such is not executable for the reason that as a owner of the property they enjoyed the same and also respondent not adduced any evidence to prove the ownership or right over the suit property But the Court below dismissed the said application stating that the the decree is executable. Hence, the petitioner filed this petition.

3. The learned counsel for the petitioner submits that the property is being enjoyed by the petitioner as third generation owner but the Court below dismissed the application as not maintainable by holding that the petitioner has admitted to be the tenant under the respondent herein.



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Furthermore, the super structure in petition mentioned property in S. No. 150 stands in the name of the petitioner and Chandra. But, the said facts was not considered by the Court below. Hence, he prays to allow this petition.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. On perusal of the records, it reveals that already the petitioner herein filed O.S No. 6298 of 2013 claiming herself as tenant in respect of the property with the decree holder. Subsequently he filed the application to amend the plaint and the same was allowed. Aggrieved over the same the decree holder preferred CRP NO. 4439 of 2015, wherein, this court held that she admitted that she is tenant under the respondent and allowed the petition as on date that order is in force and it was not challenged before any court of law the said CRP order was marked before the executing by the respondent as Ex.R8 and the same was rightly considered by the executing Court. Besides, the appeal preferred by the petitioner also dismissed which also not been challenged. As on date, the claim of the title in respect of suit property was not been accepted in the earlier proceedings. Even patta relied by her also not recognised her title. Considering the above facts, it clearly



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reveals that the petitioner is tenant under the respondent and also not proved her ownership over the petition mentioned property. Therefore, in earlier suit proceedings the petitioners title has not been accepted and finality was arrived. As discussed above, the order passed by the Court below is well reasoned one which needs no interference.

6. In the result, this petition is dismissed. No Costs. Consequentially, connected miscellaneous petition is closed.

08.11.2023

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To

The IX Assistant City Civil Court, Chennai.



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T.V.THAMILSELVI,J.

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