

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10. 2023

CORAM:

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

CRP No. 3880 of 2022
& CMP No. 23926, 23901 & 23816 of 2023

M.Balasubramaniam

...Petitioner

Vs.

1.T.Subramanian

2.G. Arumugasamy

3.Chinnathai

....Respondents

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to allow this Civil Revision petition, set aside the order of break open the lock dated 21.09.2023 passed in E.A No. 3 of 2023 in E.P No. 149 of 2017 in O.S No. 557 of 2004 by the Hon'ble Principal District and Sessions Judge, Thiruvallur.

For Petitioner : Mr.S.Sundaresan

For Respondent :

ORDER

This petition has been filed to set aside the order of break open the lock dated 21.09.2023 passed in E.A No. 3 of 2023 in E.P No. 149 of 2017 in

O.S No. 557 of 2004 by the Principal District and Sessions Judge, Thiruvallur.

2. The learned counsel for the petitioner submitted that admittedly the petitioner was third party to the suit proceedings in O.S No. 577 of 2004, the said suit was filed by the respondent/plaintiff against the defendants and the suit was decreed. Thereafter, E.P No. 149 of 2017 was filed to execute the decree for delivery. The revision petitioner herein who claim himself as tenant filed the application Application in E.A(SR) No. 7923 of 2023 in E.P No. 149 of 2017 in O.S No. 557 of 2004 under order 21 rule 9 r/w Section 47 of CPC application for resistance/obstruction in respect of schedule mentioned property and the same was returned by the Trial Court and also ordered for delivery with police aid and break open the lock. Hence he he preferred this petition to leave of this court since because she is third party.

3. On perusal of the records it reveals that the revision petitioner claiming himself as tenant filed application under order 21 rule 9 r/w Section 47 of CPC raising his obstruction in respect of schedule mentioned property as a tenant in the suit property but that application was returned for the reason that the petitioner is third party to the suit proceedings. In the meanwhile, execution order for delivery of break open lock with police aid was ordered by the Trial Court on 21.09.2023. Hence the learned counsel for the petitioner submitted that as a tenant he was not

aware of the suit proceedings and also he is a tenant under the third defendant. He further submitted that the endorsement made by the court amine discloses that there is three shops in ground in which two shops are closed and one Briyani shop running by the third party on southern side. Therefore, opportunity is to be given to the revision petitioner to establish his claim before the Trial Court. Report of Amin also perused. It reveals that two shops were closed one shop is under occupation of third party. Hence, order dated 29.09.2023 passed in E.A No. 3 of 2023 in E.P No. 149 of 2017 in O.S No. 557 of 2004 is set aside. Further, the Trial Court is directed to hear obstruction petition and decide on merits in E.P No.149 of 2017 in O.S No. 557 of 2004 within a period of one weeks from the date of copy of this order, till then shall not proceed execution proceedings.

4. In result, this Civil Revision petition is allowed. No Cost. Consequentially connected miscellaneous petition is closed.

13.10.2023

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Note: Issue order copy on 16.10.2023.

T.V.THAMILSELVI,J.

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