



C.R.P. No.3960 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3960 of 2023

and

CMP.No.24342 of 2023

Sengoda Gounder (Died)

1.Chinnathayee

2.Dhayanithi

... Petitioners

Versus

MuthuGounder

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 28.08.2023, passed in R.E.P.No.3 of 2017 in O.S.No.1173 of 1973, on the file of the Principal District Munsif Court, Thiruchengode.

For Petitioner : Mr. S.Senthil



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ORDER

The petitioner has filed this petition to set aside the fair and decreetal order dated 28.08.2023, passed in R.E.P.No.3 of 2017 in O.S.No.1173 of 1973, on the file of the Principal District Munsif Court, Thiruchengode.

2. Before the execution Court, the decree holder has preferred an R.E.P.No.3 of 2017 in O.S.No.1173 of 1973, stating that there was a disobedience on the part of the Judgment Debtor in respect of obliterating the usage of pathway in Survey No.35/4 and they prayed to take action for the disobedience on the side of the Judgement Debtor. Accordingly, the execution Court passed an order without proper reasons. Challenging the said order, the Judgement Debtor has preferred this revision.

3. The learned counsel for the revision petitioner submitted that in order to execute the decree, the Decree Holder / respondent herein has filed the R.E.P.No.3 of 2017. But there was no proof on his side to state that there was a disobedience caused by the Judgment Debtor, without considering which, the Executing Court has erroneously passed an order by



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allowing the prayer as such and the same is not maintainable. In the order passed by the Executing Court in Pr.5.3, the Court has observed that the respondent has not proved that there was no obliteration of pathway in S.No.35/4, but the revision petitioner/Judgment Debtor was given no opportunity by the learned trial Judge to prove the same.

4. On perusal of the Court records, it reveals that there was no mentioning about the recording of evidence before the Executing Court. When the decree holder approached the Court to take action against the disobedience committed by the Judgment debtor, the duty is equally casted upon the decree holder to prove the same, so also the judgment debtor who pleaded that he has not committed any default. Both the parties have to prove the facts before the trial Court. However, no evidence was adduced, therefore the order passed by the learned trial Judge is erroneous one, therefore this Court is inclined to set aside the findings of the learned trial Judge in R.E.P.No.3 of 2017 in O.S.No.1173 of 1973.



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T.V.THAMILSELVI, J.

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5. Both the decree holder and Judgment debtors are directed to adduce evidence with regard to obliteration of path way as well as disobedience by the Judgment debtor before the trial Court within a period of 6 weeks from the date of receipt of a copy of this order.

6. Accordingly, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

09.11.2023

Index : Yes / No

Neutral Citation: Yes / No

Speaking/Non-speaking order

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1. The Principal District Munsif, Thiruchengode.

2. The Section Officer,
VR Section, High Court of Madras.

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