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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.No.4016 of 2023
and
C.M.P.No.24583 of 2023

Chandramohan

... Petitioner

Vs.

Jayanthi

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside docket order dated 31.08.2023 and 22.09.2023 in Filing Number O.S.No.600 of 2023 on the file of Sub Judge at Arakkonam and direct to number the Filing Number O.S.No.600 of 2023.

For Petitioner

: Mr.K.U.Sale Murugan

ORDER

The Civil Revision Petition has been filed challenging the docket order dated 31.08.2023 and 22.09.2023 in Filling Number O.S.No.600 of 2023 on the file of the Sub Judge, Arakkonam and direct to number the Filing Number in O.S.No.600 of 2023.



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2. The learned counsel for the petitioner submits that the petitioner has filed a Suit before the Trial Court for declaration and injunction against the respondent. The respondent herein earlier filed a Suit in O.S.No.104 of 2018 on the file of Munsif Court at Arakkonam against the wife and son of the petitioner. However, petitioner is the title holder and possessor of the suit scheduled property. It is further submitted that the petitioner was not impleaded as a party in the said Suit.

3. The learned counsel for the petitioner submits that in fact in the decree obtained by the respondent / plaintiff in O.S.No.108 of 2018 is fraudulent decree because the correct identification of the property was not given by the respondent. The respondent is taking advantage of the exparte decree and has identified the plaintiff's property as the Suit property in O.S.No.108 of 2018 and attempted to grab the property. Moreover, the petitioner was not impleaded as a party to the said Suit.

4. The learned counsel for the petitioner further contended that the Trial Judge has held that if at all any right over the property has been



disputed, the plaintiff is ought to have workout his remedy before the Executing Court under Order 21 Rule 97 of Code of Civil procedure, where the right and title over the property shall be adjudicated, but not in a separate Suit. Accordingly, it was rejected. Aggrieved from the order, the petitioner filed this Civil Revision Petition.

5. However, it is contended that the defendants in the earlier Suit filed by the respondent is the wife and daughter of the plaintiff and they were remained exparte. Based on the exparte decree, the respondent proceeded with the Execution Petition. Before the Trial Court they have produced the documents of Aadhar Card and Identification Card in order to show that they are in possession of the property.

6. Admittedly, the said property is a Grama Natham and the respondent is the neighbour. Against each other there were disputes in the property. Further, the petitioner is not a party to the O.S.No.104 of 2018. According to the petitioner he is in possession of the property as of now.



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7. In view of the facts and circumstances of the present case, this Court is of the considered opinion that the maintainability of the claim is subject to the mixed question of law.

8. The learned counsel for the petitioner brought to the notice of this Court that based on the Will, the plaintiff in O.S.No.108 of 2018 claiming right over the property, but the said punja pertaining in Survey No.13/1. However, now the Execution proceedings are initiated against the property in Grama Natham S.No.82/1. Therefore, according to the petitioner, the respondent has no right over the Grama Natham property.

9. Therefore, this Court is of the considered opinion that all the parties are inclined to claim their property right in a suit. In order to protect the property right, if the opportunity is not given to the parties, their valuable right to defend the case will be defeated. Accordingly, the docket order dated 31.08.2023 and 22.09.2023 in Filing Number O.S.No.600 of 2023 on the file of Sub Judge at Arakkonam are set aside and the Trial Court cannot decide the matter involving right over the property as well as possession and identification of the suit property at the numbering stage itself, since it



involves mixed question of law.

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10. Registry is directed to return the original plaint within a period of two (2) weeks from the date of receipt of a copy of this order.

11. With the abovesaid directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

28.11.2023

Jeni

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The Sub Judge,
Arakkonam.



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C.R.P.No.4016 of



T.V.THAMILSELVI, J.

Jeni

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