



C.R.P. No.4170 of 2023

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T.V.THAMILSELVI, J.

This matter is taken up for hearing under the caption “For Being Mentioned” today at the instance of the learned counsel for the revision petitioners.

2. The learned counsel for Revision Petitioners would submit that this Court by an order dated 27.11.2023 disposed of the above C.R.P.. However, the learned counsel would submit that in para 3 of the order, at the 12th line, instead of mentioning as Execution Petition, it was mentioned as EA and in para 4 of the order, instead of restoring Execution Petition, it was mentioned as execution application. Hence, he prayed to modify the same. Accordingly, the matter is listed today.

3. Considering his submissions, in paras 3 and 4 of the order shall be substituted as follows :-

“3. The learned counsel for the petitioners submitted that the Executing Court erroneously dismissed the EP on 28.08.2023, based on the order passed by this Court in CRP.No.2852 of 2008, on 05.01.2023. In fact, liberty was granted to the 3rd party



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to file application under Order XXI Rule 97 of CPC before the Executing Court. Accordingly, the Executing Court was directed to dispose of the said petition in view of the final decree passed in I.A.No.329 of 2005 in O.S.No.400 of 1998, since the property involved in both the suits are one and the same. As per the direction of this Court, the 3rd party has filed a petition under Order XXI Rule 97 of CPC in REA.No.2 of 2023. On a perusal of the E-court status, it reveals that, on 21.06.2023, REA.No.2 of 2023 was pending before the Executing Court, but on 28.08.2023, the Executing Court dismissed the said E.P. without giving any finality. But mis-took the order of C.R.P. and closed the E.P. as such, which shows non application of mind by the Receiving Officer. In fact, as per I.A. 329 of 2005 in O.S.No.400 of 1998 final decree was passed and plaint portion was also allotted, subsequently to get delivery of the decree and for D1 also, specific portion was allotted to get delivery of the property. As per the final decree, the Decree Holder / plaintiff has filed a EP, who has approached the Court from the year 1998, but without considering all these aspects, the Executing Court



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erroneously closed the application and it is liable to be set aside.

4. Hence, the Executing Court is directed to restore R.E.P. No.11 of 2005, within a period of one week from the date of receipt of a copy of this order and also directed to dispose of the main E.P./ R.EA.No.11 of 2005 along with E.A.No.2 of 2023 as his share was already said to be allotted on merits, within a period of 2 weeks from the date of receipt of a copy of this order. ”

4. Registry is directed to incorporate above correction in the Order of this Court in C.R.P.No. 4170 of 2023 dated 27.11.2023 and issue fresh order copy to the Revision Petitioner.

09.01.2024

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