



C.R.P.No. 4407 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4407 of 2023

K. Anuratha

.. Petitioner

Vs

1.K. Renuka

2.K. Gopala Krishnan

3.K. Srinivasan

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the order of the IX Assistant City Civil Judge, Chennai dated 07.09.2023 in E.A.No.07 of 2022 in E.P.No.2513 of 2019 in O.S.No.1271 of 2013.

For Petitioner : Mr. T. Nagin Chella Kaushik

ORDER

This Civil Revision Petition is filed challenging the finding given by the Execution Court in E.A.No.7 of 2022 in E.P.No.2513 of 2019



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in O.S.No.1271 of 2013, the decree holder has preferred this revision.

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2. To execute the final decree, the decree holder / petitioner herein filed E.P.No.2513 of 2019 for delivery of possession. The executing Court ordered as follows: -

“JD vacated the suit premises

DH is not entitled for entire extent of S.P. The DH is entitled only to 'A' schedule of final decree. 'A' schedule is a vacant site. Without demolition of existing superstructure, decree cannot be executed.

Hence the DH is directed to vacate the schedule mentioned property for demolition of existing superstructure.”

3. Aggrieved by the said finding, the petitioner / decree holder preferred this revision.

4. The learned counsel for the petitioner / decree holder submits that as per the final decree, she is entitled for 'A' portion, for that she preferred the above execution petition. By mistake, she has mentioned the entire property but restricted her claim only with regard to 'A' portion, as allotted in the final decree as well the observation made by this Court while



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discussing the appeal in A.S.No.560/2019. Instead of the order for delivery for the 'A' schedule portion as per the final decree, though there is a mistake committed by the decree holder instead of that the executing Court passed such order, directed to vacate the entire property contrary to the findings given in the appeal proceedings in A.S.No.560 of 2019.

5. Considering that, on perusal of the judgment passed by this Court in A.S.No.560 of 2019, this Court observed while disposing the petition, which reads as follows: -

“Considering the facts of the case, the appellant is given four months time to vacate, as requested by the learned counsel appearing for the appellant.”

Accordingly, judgment debtor / Renuka was given four months time to vacate, as she promised before the Court but as on date, she has not complied with the said order.

6. Admittedly, as per the final decree proceeding, the claim of the decree holder was accepted by the trial Judge while disposing the final decree application in I.A.No.239 of 2017, as she is eldest of all, born



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through first wife, she is entitled for 1/4th share in the property. Accordingly, 'A' schedule property as mentioned in the Advocate Commissioner report was allotted to her. Now the revision petitioner / decree holder also restricts her claim only in respect of the said 'A' schedule property. However, there is a mistake crept in the execution application in respect of the description of the property where she mentioned the entire property. But the revision petitioner is now aged about 70 years approaching the Court for the decree for about more than 10 years, for that technicality issue should not be put forth.

7. Therefore, this Court is inclined to set aside the finding of the Executing Court, even Executing Court is empower to restrict to grant decree in respect of the 'A' schedule property as per the final decree. On the contrary, the Executing Court has directed the decree holder to vacate the premises as such is not acceptable one.

8. Accordingly, the Civil Revision Petition is allowed by setting aside the order of the IX Assistant City Civil Court, Chennai dated



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07.09.2023 in E.A.No.7 of 2022 in E.P.No.2513 of 2019 in O.S.No.1271 of

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2013. No costs. The revision petitioner / decree holder is directed to file application to execute the decree in respect of 'A' schedule property as per the final decree by amending the description of the property, within two weeks. On such application, the Executing Court is directed to dispose the same, within four weeks from the date of receipt of copy of this order.

23.11.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The IX Assistant City Civil Judge, Chennai.



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T.V.THAMILSELVI, J.

AT

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