



WEB COPY



CRP No.1769 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.11.2023

CORAM :

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

Civil Revision Petition No.1769 of 2023
and
CMP.No.11494 of 2023

Priya

... Petitioner

Versus

Saraswathi Ammal

... Respondent

Civil Revision Petition filed Under Section 115 of Code of Civil Procedure, praying to set aside the fair and final order dated 09.11.2022 passed by the learned District Munsif, Vandavasi, Tiruvannamalai District in E.A.No.17 of 2021 in E.P.No.5 of 2021 in O.S.No.283 of 1983.

For Petitioner : Mr.T.Mathi

For Respondent : Mr.T.Sathyamoorthy

ORDER

The petitioner has filed this petition to set aside the order dated 09.11.2022 passed by the learned District Munsif, Vandavasi, Tiruvannamalai District in E.A.No.17 of 2021 in E.P.No.5 of 2021 in O.S.No.283 of 1983.



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2. Heard, Mr.T.Mathi, learned counsel for the petitioner and Mr.T.Sathyamoorthy, learned counsel for the respondent and perused the materials available on record.

3. Before the Executing Court the 8th respondent / Judgment Debtor has filed an application to set aside the ex-parte decree passed against her. The said application was objected by the Decree holder stating that in order to prevent the enjoyment of the decree she came forward with this application, without assigning proper reason. Considering both side submissions the learned trial Judge held that in respect of special opportunity given to the 8th respondent / Judgment Debtor , she has not filed any objection, therefore she was set ex-party and also held that in order to protect the proceedings she come forward with this application. Accordingly E.A.No.17 of 2021 in E.P.No.5 of 2021 was dismissed.

4. The learned counsel for the decree holder/ plaintiff has filed a suit in the year 1983, as she claim share in the property belongs to her father, all these years she was not able to enjoy the fruits of the decree, in spite of the opportunity given to the father of the revision petitioner namely D6 / Dharman who was also ex-parte in the entire suit proceedings. Now, at the



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stage of executing the decree the 8th respondent has come forward with this application in order to prepare the proceedings and the same was rightly dismissed by the executing Court which needs no interference.

5. By way of reply the counsel for the revision petitioner submitted that long back she purchased the property from the original vendor during 1979 from ChinnaKulandai ammal / 1st defendant who claimed herself as the 2nd wife of the plaintiff's father. Admittedly, the father of the revision petitioner / Dharman remained ex-parte before the trial Court. Subsequently, legal heirs contested the case before the executing Court and nearly 7 adjournment given to the revision petitioner but she has not file any objection. According, to the Decree holder through Amin possession also taken, to that effect delivery receipt also produced. But as per the submissions made by the revision petitioner, they purchased the property long back, so if opportunity is not given, her valuable right to defend her case will be defeated.

6. Accordingly, Ex-parte order is set aside and the revision petitioner is directed to file counter objection and on such objection the executing Court is directed to dispose of the E.A on merits within a period of 4 weeks from the date of receipt of a copy of this order. Till then not to participated.



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T.V.THAMILSELVI, J.

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7. Accordingly, this Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

28.11.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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To

- 1.The District Munsif, Vandavasi,
Tiruvannamalai.
- 2.The Section Officer,
VR-Section, High Court of Madras.

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