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C.R.P.Nos.668 & 669 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

Civil Revision Petition.Nos.668 of 669 of 2017
and
C.M.P.No.3376 of 2017

1.P.S.Ganesan

2.Saraswathi

... Petitioners in both C.R.Ps'

Vs.

1.G.Dhanraj

2.K.Marappa Gounder

...Respondents in both C.R.Ps'

Prayer in C.R.P.No.668 of 2017: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order dated 04.11.2016 made in E.P.No.87 of 2013 in O.S.No.502 of 1999 on the file of the II Additional Subordinate Judge, Coimbatore.

Prayer in C.R.P.No.669 of 2017: Civil Revision Petition filed under Article 227 of Constitution of India, to direct the II Additional Subordinate Judge, at Coimbatore to hear and dispose the E.A.No.753 of 2016 in E.P.No.87 of 2013 in O.S.No.502 of 1999 within a time frame.



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In both C.R.Ps': For Petitioners : Mr.N.Krishnakumar
for M/s.Sarvabhauman Associates.
For Respondents : M/s.K.S.Karthik Raja
ORDER

Here is a case where a person who is a third party to the suit, claims that the property is his own and did not belong to the defendant. He filed an obstruction application in E.A.No.753 of 2016. Despite numbering of the obstruction petition and issuing notice to the respondents therein to file their counter, the Court proceeded and ordered delivery.

2. It is well settled that when an obstruction petition is pending, the Court should remove the obstruction first and only thereafter proceed further. This position has been reiterated by the Court in ***S.Arumugam Vs. Krishnammal***, reported in 2010 (5) Law Weekly 735. Giving a go-by to the said procedure, the Court below has ordered delivery while it is still investigating the matter in E.A.No.753 of 2016.

3. Unfortunately, the petitioner has been dispossessed of the property pending the litigation. Though he seeks for redelivery in C.M.P.No.3376 of 2017, I am not in a position to grant the said relief because till date the decree continues to be intact. The Court should have been extremely



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cautious while granting a decree for delivery when an obstruction petition had been presented and it has also been taken on file.

4. If the application in E.A.No.753 of 2016 is allowed, the petitioner will be entitled to redelivery of the property. This is not only by virtue of Section 144 of Code of Civil Procedure, but it should follow *ex debito justitiae*. I cannot set aside the order of delivery today because possession has already been taken. Therefore, I am pointing out the procedure that the Court ought to have followed and with that I am closing, Civil Revision Petition No.668 of 2017.

5. Insofar as the Civil Revision Petition No.669 of 2017 is concerned, the learned Trial Judge, has merely adjourned E.A.No.753 of 2016. As per order 21 Rule 97 read with 103 of Code of Civil Procedure, it is the duty of the executing Court to decide the right, title and interest of the obstructor. Failure to decide it and tried like a suit, amounts to an infraction, of the said provision. Therefore, the Trial Court is directed to take up the application filed under Order 21 Rule 97 and decide on validity of the said application. It should also look into the aspect that the decree is a cryptic decree and not reasoned in terms of Order 20 Rule 5.



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6. I should add a suit for specific performance is not a suit for title. Therefore, unless and until a pre-existing title was available with the defendant, by the mere fact that the Court has executed the sale deed, title does not follow. The Court below will take into consideration all these issues at the time of disposal of E.A.No.753 of 2016. It shall give an opportunity to the respondents to file a counter and take up the application for adjudication without granting unnecessary adjournments and dispose of the application on or before, 26.09.2023 and submit a report to this Court on or before, 29.09.2023. With this above direction, Civil Revision Petition No.669 of 2017 is disposed of.C.M.P.No.3376 of 2017 is dismissed. No costs.

06.07.2023

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Index:Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

The II Additional Subordinate Judge, Coimbatore.

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