



WEB COPY



C.R.P.No.1967 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.1967 of 2005
and CMP.No.17549 of 2005

1.The District Collector
Chennai.

2.The Tahsildar
Egmore-Nungambakkam Taluk
Chennai.

.. Petitioners / Petitioners /
Judgment Debtors

Vs

M.Ramasamy

..Respondents/Respondents/
Decree holder

Prayer : Civil Revision Petition filed under Section 115 of CPC., praying to allow the above CRP and set aside the order dated 08.8.2005 made in E.A.No.4624 of 2004 in E.P.No.1044 of 2004 on the file of X Assistant City Civil Court, Chennai, in O.S.No.1840/2001 dated 29.01.2003 on the file of XII Assistant City Civil Judge, Chennai.

For Petitioners : Mr.C.Jayaprakash
Government Advocate
For Respondent : No Appearance

ORDER

The respondent herein as plaintiff has laid O.S. No.1840 of 2001 before the XII Assistant City Civil Court, Chennai for (a) a decree for mandatory



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injunction to the defendants to issue patta to plaintiff's suit property; and (b) for prohibitory injunction against them not to disturb his possession.

2. The defendants have filed their written statement, but it appears that they were set ex-parte during trial as they did not participate in the same. Thereafter, the plaintiff had taken out an application in E.P. No.1044 of 2004 for executing the decree he obtained in which the defendants had filed E.A. No.4624 of 2004 under Section 47 CPC. Their contention that the decree is inexecutable since the suit property is a public street.

3. There is a reference in the affidavit filed in support of E.A. No.4624 of 2004 that the defendants had filed some application for setting aside the ex-parte decree. To a pointed query, the learned Government Advocate submitted that the defendants indeed have filed I.A. No.13590 of 2004 under Section 5 of the Limitation Act and I.A. No.11038 of 2005 under Order IX Rule 13 CPC. The learned counsel added that on 22.09.2005, the same was allowed as the respondent/plaintiff did not file any objection to the same.



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4. Meanwhile, the execution court dismissed E.A.No.4624 of 2004. It may be stated that the execution proceedings are before the X Assistant City Civil Court. The present CRP is filed challenging the order in E.A.No.4624 of 2004.

5. If the ex-parte decree dated 29.01.2003 has already been set aside vide order in I.A. No.11038 of 2005, necessarily it will imply that there will not be any decree to be executed in E.P. No.1044 of 2004. This implies that the present civil revision petition, for all practical purposes has become infructuous.

6. Since the suit has been restored, there cannot be any apprehension about the dismissal of E.A.No.4624/2004. In view of the same, the CRP is dismissed as having become infructuous. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order / Non-speaking Order
ds



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To:

1.The Judge

X Assistant City Civil Court
Chennai.

2.The Section Officer

VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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