



CRP (MD) No.240 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.07.2023
Pronounced on	08.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.240 of 2023

and

CMP(MD)No.1149 of 2023

1.G.Ramesh

2.R.Anusya

... Petitioners

Vs.

1.A.Kamatchi@ Kamatchia Pillai

2.A.Tamilselvan @ Bose

... Respondents

PRAYER: Civil Revision Petition filed under Section 155 of Code of Civil Procedure, to set aside the fair and executable order dated 17.11.2022 and made in E.A.No.53/2021 in E.P.No.27/2008 in O.S.No.54 of 2003, on the file of District Munsif, Vadipatti.

For Petitioners : Mr.R.Suriyanarayanan

For Respondents : Mr.K.K.Ravie



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ORDER

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This civil revision petition is preferred as against the order passed in E.A.No.53/2021 in E.P.No.27 of 2008 in O.S.No.54 of 2003, dated 17.11.2023 on the file of District Munsif Court, Vadipatti.

2. According to the petitioners, they have filed an application under Order 21 Rule 97 & 99 and 151 of CPC before the Executing Court, by stating that, in the third schedule of property a portion of property to an extent of 832 sq.ft was purchased by the petitioners through a registered sale deed dated 17.12.2012 from one Ramanujam. The said Ramanujam purchased the property from one Chellammal on 21.08.2000. The petitioners are in possession and enjoyment of the said property from the date of their purchase. The plaintiff with *mala fide* intention, without impleading the petitioners in the suit obtained a fraudulent decree in collusion with the defendants. Hence, the petitioners filed an application under Order 21 Rule 97 & 99 and 151 of CPC. The same was erroneously dismissed by the Executing Court. Hence, the petitioners were constrained to file the above revision petition.

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3. The learned counsel appearing for the revision petitioners would submit that, the respondents as plaintiffs filed an eviction suit against the defendants in O.S.No.54 of 2003, on the file of District Munsif, Vadipatti, and obtained an *ex parte* decree against them on 29.10.2003. In pursuant to the *ex parte* decree, execution proceedings in E.P.No.27 of 2008 was filed and the same was dismissed on 02.07.2013 on the ground that the property could not be identified, against which, CRP(MD)No.1451 of 2013 was filed and the same was allowed on 02.03.2021. Thereafter, the respondents/plaintiffs proceeded with the execution petition for taking delivery of the property belonging to the petitioners herein. The petitioners are the absolute owner of the property by virtue of sale deed dated 17.12.2012. It is further stated that the suit property in O.S.No.54 of 2003 was already been sold out by its owner on 19.08.1965 under Ex.P14. However, the respondents/plaintiffs suppressing the above fact filed the suit against the defendants and obtained a fraudulent decree and now attempting to get the property of the petitioners. Hence, the petitioners filed a petition in E.A.No.53 of 2021 under Order 21 Rule 97 of CPC, to determine the independent right and title over the property in E.P.No.27 of 2008 to which



the petitioners made their obstruction to delivery. However, the trial Court rejected the application on the ground of maintainability. Since the petitioners are not the judgment debtors, their only remedy is to file a petition under Order 21 Rule 99 of CPC.

4. The learned counsel appearing for the revision petitioners would further submit that the reason stated for rejecting the application by the Executing Court that the petitioners are not the judgment debtors in the execution proceedings and since they have not been dispossessed from the subject property, as such they have no *locus standi* to file the petition under Order 21 Rule 97 of CPC is incorrect. The law is now well settled that a person, who intends to obstruct execution of the decree, setting up independent title need not wait for actual dispossession. He could move the Court under Order 21 Rules 97 to 99 of CPC apprehending dispossession. Once such application is filed, the obstructors will have to prosecute the same. Order 21 Rule 101 of CPC provides that the Executing Court can determine all questions relating to right, title and interest of the obstructors in the said application itself for the purpose of deciding the said question, the



Court which hears the application shall be deemed to have jurisdiction to decide those questions. Hence, the order passed by the Executing Court calls for interference.

5. On the other hand, the learned counsel appearing for the respondents would contend that, any order passed in application under Order 21 Rule 97 of CPC, the remedy is to prefer an appeal and not revision. Any order passed by the Court under Order 21 Rule 97 of CPC would be treated as a decree under Rule 101 which would be appealable. The order of adjudication passed under Order 21 Rule 98 of CPC is to be treated as a decree and the same shall be subjected before an appellate Court by way of challenge. Revision cannot be entertained by this Court against an order passed under Rule 97 of CPC as there is a clear prohibition under Section 115(2) of CPC, when an appeal is provided for under Rule 103 of CPC. Therefore, the revision filed against the impugned order is not maintainable. He would further contend that, the obstructor cannot directly move the Executing Court for adjudication of his title to the property. He would further contend that nothing in Rules 98 and 100 shall apply to transferee



pendente lite. Obstruction by a person claiming to be in possession, such objections are barred under Order 21 Rule 97 of CPC and the executing Court cannot go beyond decree. If Executing Court is considering the third party's claim, it would result in depriving the decree holder of his possession because of filing of spurious claim. He would further submit that an application filed by the third party in anticipation of his dispossession cannot be entertained. The obstructor cannot directly move the Executing Court for adjudication of his title to the property. The Court has to protect the interest of the decree-holder as against *mala fide* obstructors, who may have intention to stultify the proceedings of execution. Moreover, obstruction by a person claiming to be in possession, such objections are barred by the provisions of Order 21 Rule 97 of CPC. Therefore, the above revision petition is not maintainable. To support his contentions, he has relied upon the following decisions cases reported in :-

- (i) 2015 (1) CTC 516
- (ii) 2021 (2)MWN 578
- (iii) 2013 (4) LW 801
- (iv) 2022 (4) CTC 278



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(v) 1997 (3) SCC 694

(vi) 2004 (4) MLJ 118 SC

(vii) (2019) 5 CTC 104

(viii) 2017 5 LW 601

(ix) 2006 3 CTC 171

6. Heard on both sides and records perused.

7. Whether the order of Executing Court to be challenged by way of revision or appeal ?

8. Insofar as the matter is concerned, it is not necessary to advert to the merits of the contentions of either parties in this civil revision petition. When it is the case of the revision petitioners that the application have been preferred by them in E.A.No.53 of 2021, under Order 21 Rule 97 of the Code of Civil Procedure, any order passed in such application being in the nature of the decree as contemplated under Order 21 Rule 103 of the Code of Civil Procedure and thereby, such order having the same force and be subject to the



same conditions as to an appeal or otherwise as if it was a decree. If it is found that the revision petitioners have any grievance over the order passed by the Executing Court in their application preferred under Order 21 Rule 97 of the Code of Civil Procedure, the only remedy available to them is to prefer an appeal before the appropriate forum and not challenge the same by way of revision. Further, as seen from Section 115(2) of CPC, when the impugned order being in the nature of decree, against which appeal lies before the appropriate forum, this Court cannot vary or reverse such orders by invoking the revision provision. Therefore, the civil revision petition itself is not maintainable in the eye of law and the petition is liable to be rejected.

9. Insofar as the order passed under Order 21 Rule 97 of CPC, is an appealable order and not a revisable order and the revision would not lie thereof, an useful reference may be made to the decision reported in **(2007) 1 LW 220 (S.Rajeswari Vs S.N.Kulasekaran and others)**, which has been subsequently followed by our High Court in the decision reported in **2015 (1) CTC 516 (C.Murugan Vs Dr.Thilagavathy and another)**. A perusal of the above said decisions would go to show that the revision cannot be



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entertained by this Court as against the order passed under Order 21 Rule 97 of CPC, as there is a clear prohibition under Section 115(2) of CPC, when an appeal is provided to the said order under Order 21 Rule 103 of CPC. Therefore, it is found that the revision preferred by the revision petitioners as against the impugned order is found to be legally not maintainable.

10. In the light of the above position, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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Note: Registry is directed to return the original impugned order after retaining the photo copy of the same.

To

The District Munsif,
Vadipatti.

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K.GOVINDARAJAN THILAKAVADI

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order made in
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