



C.M.A. (MD)No.22 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.SA.(MD)No.22 of 2021 and
CMP(MD).No.3360 of 2021

Karthieyani

...Appellant/ third party

Vs.

1.M.Armugasami
2.Annamalaikani
3.Anees Kasiram
4.Aravind Kasiram

Respondents

PRAYER: This Civil Miscellaneous Second Appeal is filed under Order 21 Rule 97 Section 100 CPC against the fair and decreetal order, dated 04.01.2021 passed in CMA.No.33 of 2020 on the file of the Additional District and Sessions Court / Fast Track Court, Tenkasi confirming the fair and decreetal order, dated 07.01.2020 passed in E.A.No.183 of 2018 in E.P.No.7 of 2016 in O.S.No.265 of 2003 on the file of the Principal Subordinate Judge, Tenkasi.

For Appellant : Mr. V. Meenakshisundaram

For R1 : Mr.R.J. Karthick



C.M.A. (MD)No.22 of 2021

JUDGMENT

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This Civil Miscellaneous Second Appeal has been filed against the fair and decreetal order, dated 04.01.2021 passed in CMA.No.33 of 2020, on the file of the Additional District and Sessions Court / Fast Track Court, Tenkasi, confirming the fair and decreetal order, dated 07.01.2020 passed in E.A.No.183 of 2018 in E.P.No.7 of 2016 in O.S.No.265 of 2003, on the file of the Principal Subordinate Judge, Tenkasi.

2. The brief facts, leading to the filing of this Civil Miscellaneous Second Appeal, are as follows:-

The 1st respondent had obtained a decree and Judgment for declaration of possession as against the husband of the appellant / 2nd respondent herein in O.S.No.265 of 2003, on the file of the Sub Court, Tenkasi, on 12.03.2008. The said decree was put in enforcement in E.P.No.7 of 2016 before the Sub Court, Tenkasi. When the above said E.P was pending, an E.A has been filed by the wife, Judgment Debtor viz., appellant herein to obstruct the delivery on the ground that she has a right of residence in the matrimonial home. She has also taken a stand that she



C.M.A. (MD)No.22 of 2021

was residing separately from her husband and hence, she has a right of residence in the said property. However, the learned Subordinate Judge, Tenkasi considering the fact that there is no decree of divorce obtained and there is no evidence to show that the petitioner / appellant herein was living separately, dismissed the obstruction petition filed by the appellant confirming the Judgment and decree passed in O.S.No.265 of 2023, on the file of the Sub-Court, Tenkasi. Against which, the appellant has filed an appeal in in CMA.No.33 of 2020, on the file of the Principal District Court, Tirunelveli and the learned Judge has also confirmed the order of the Subordinate Judge, Tenaski, as against which, the present Civil Miscellaneous Second Appeal has been filed by the appellant.

3. The learned counsel for the appellant submitted that the execution petition in E.P.No.7 of 2016 itself was disposed of on 03.09.2021 and delivery has been effected and recorded.

4. Such view of the matter, nothing survives for adjudication in the above Civil Miscellaneous Second Appeal. It is to be noted that when the decree has been obtained against the husband of the appellant filing of application by the wife resisting the delivery itself is motivated



C.M.A. (MD)No.22 of 2021

and without establishing the factum of divorce or any charge over the the property towards maintenance, such plea cannot be entertained as a matter of right. I do not find any merit in the Civil Miscellaneous Second Appeal and accordingly, the Civil Miscellaneous Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

09.03.2023

Index : Yes/No

Internet : Yes/No

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To

1. The Additional District and Sessions Court / Fast Track Court, Tenkasi
2. The Principal Subordinate Judge, Tenkasi.



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C.M.A. (MD)No.22 of 2021

N.SATHISH KUMAR, J.

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C.M.SA.(MD)No.22 of 2021 and
CMP(MD).No.3360 of 2021

09.03.2023