



C.R.P(MD).No.679 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.679 of 2023

and

CMP(MD)No.3159 of 2023

Chandra Mohan(Died)

1.D.Rajamanickam

2.D.Jeyaraj

3.D.Selvaraj

4.C.Jegadeeswaran

5.C.Rameeladevi

6.C.Usha Devi

C.Vairamani (Died)

... Petitioners/Respondents 3 to 10/

Defendants 3 to 10

Vs.

Annamalai(Died)

Muthupandian(Died)

1.Andavarkulanthai

2.Andavarpillai

3.Andavarputhiran

4.Pushpalatha

5.Kamatchi

6.Muthukumaran

7.Arumugam



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8.Senthilnathan

9.Thevarayan

10.Muthiah

11.M.Balasubramanian

... Respondents/Respondents 1,2,11 to 21/
Defendants 1,2,11 to 21

Sri.Muthaiah Swamy Deity,

Represented by its Trustees.

Radha (Died)

Muthukrishnan (Died)

12.M.Manickavasagam

13.M.Vasiki Ramanathan

14.M.Tamilarasi Swaminathan

15.M.Mahalingam

... Respondents/Petitioners 1 to 6/
Plaintiffs 1 to 6

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records in EP.No.13 of 2021 in O.S.No.128/1997 on the file of Principal District Munsif, Thirumangalam, dated 23.02.2023 and set aside the same.

For petitioners : Mr.J.Gunaseelanmuthiah

For R13 & R15 : Mr.E.T.Rajendran

ORDER

This petition has been filed to quash the proceedings in in EP.No.13 of 2021 in O.S.No.128/1997 on the file of Principal District Munsif, Thirumangalam, dated 23.02.2023.



2.The first petitioner herein is the fourth defendant in O.S.No.128 of 1997. The suit property is a trust property. Earlier the contesting respondents herein namely the respondents No.11 to 15 herein filed a suit before the District Munsif Court, Tirumangalam, for recovery of possession of the property from the defendants in the suit and for mesne profit. The said suit was filed before District Munsif Court, Tirumangalam in O.S.No.255 of 1984. Later, it was transferred to the Sub Court, Tirumangalam and renumbered as O.S.No.128 of 1997.

3.The District Munsif Court, Tirumangalam had dismissed the above suit by the judgment and decreed dated 06.04.2006. Aggrieved by the same, the contesting respondents/plaintiffs filed an appeal in A.S.No.125 of 2006. The First Appellate Court by its judgment and decree dated 30.10.2009, reversed the decision of the Trial Court dated 06.04.2006, and decreed the suit in favour of the plaintiffs.

4.Aggrieved by the same, the defendants filed an appeal before this Court in S.A.(MD)No.113 of 2010. By the judgment and decree dated 22.08.2011, the case was remanded back to the District Munsif Court, Tirumangalam.



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5. In the second round, after the remand order dated 22.08.2011 in S.A.No.113 of 2010, the above suit in O.S.No.128 of 1997 was decreed by the Trial Court namely, the District Munsif Court, Tirumangalam on 11.12.2013. The First Appeal preferred before the Sub Court, Tirumangalam (Camp Court) in A.S.No.23 of 2014. The first appeal was dismissed. The petitioners thus filed second appeal in S.A.No.35 of 2015 before this Court. S.A.No.35 of 2015 also dismissed on 01.04.2021. These appeals were filed by the defendants No.4 to 10 which included the petitioners herein. No further appeal was filed against the judgment and decree dated 01.04.2021 of the Division Bench of this Court in S.A.No.35 of 2015. Thus, the judgment and decree dated 11.12.2013 of the Trial Court in O.S.No.128 of 1997 pursuant to the remanded order dated 22.08.2011 has attained finality.

6. On the strength of the order passed by the Division Bench in S.A.35 of 2015 dated 01.04.2021, the contesting respondents (plaintiffs) filed E.P.No.13 of 2021 before the Principal District Munsif Court, Tirumangalam, for stay. In stead of filing counter in E.P.13 of 2021, the petitioners proceed to file an application in E.A.No.48 of 2022 under Order 21 Rule 26 of CPC to stay the execution proceedings. The contesting respondents/plaintiffs/decreed holders filed counter on 25.07.2022. The Court



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had concluded that the application filed in E.A.No.48 of 2022 in E.P.No.13 of 2021 under Order 21 Rule 26 of CPC was without merits and that petition dismissed by its order dated 08.09.2022.

7. Aggrieved by the same, the petitioners had earlier filed CRP.No. 2036 of 2022 on 29.09.2022. The above said Civil Revision Petition was also dismissed by this Court by its order dated 19.10.2022. Thereafter, the execution proceedings in E.P.No.13 of 2021 was posted for enquiry on various dates and finally the arguments were heard on 16.11.2022. On 23.02.2023, delivery was ordered in favour of the contesting respondents/plaintiffs/decreed holders. Pursuant to the that, delivery batta has been paid by them.

8. Under these circumstances, the petitioners have now filed this Civil Revision Petition against the order dated 23.02.2023 in E.P.No.13 of 2021 for ordering delivery of possession in favour of the respondents/plaintiffs/decreed holders.

9. It is the contention of the petitioners that requirement under Order 21 Rule 15(1) execution proceedings have been initiated only by the six



plaintiffs, out of 7 plaintiffs, leaving the third plaintiff namely, M.Balasubramanian. It is further submitted that this Court is duty bound to pass order to protect the interest of the third defendant, who is the eleventh respondent in this Civil Revision Petition. That apart, it was submitted that the suit was filed based on the strength of Ex.A.4, Executed Deed dated 31.08.1991. It is submitted that the contesting respondents/plaintiffs/deed holders have taken steps to get an order/judgment and decree of this Court in the above proceedings for delivery of their property whereas, the property which was given under Exchange Deed dated 31.08.1981 to the petitioners. It is further submitted that in respect of the same property, which has been ordered to be delivered is subject matter of O.S.No.124 of 2021 before the Sub Court, Sivagangai, which is the subject matter of CRP(MD)No.2292 of 2022. Therefore, submitted that the delivery cannot be ordered on account of pendency of O.S.No.124 of 2021. It is submitted that the delivery of the property should not be allowed as the petitioners will be left without a shelter.

10.The learned counsel for the contesting respondents/plaintiffs/deed holders submits that the present Civil Revision Petition is nothing but an abuse of Court proceedings. It is submitted that the property in Sivakasi,



which is the subject matter of Ex.A.4 dated 31.08.1981 has not relevant. It is submitted that it is open for the petitioners to work out their remedy in pending suit in O.S.No.124 of 2021 before the Sub Court, Sivakasi.

11.I have considered the arguments advanced by the learned counsel for the petitioners and the contesting respondents.

12.In my view, the petitioners have not made out a case for interference with the order passed by the Principal District Munsif, Tirumangalam, on 23.02.2023 in E.P.No.13 of 2021 in O.S.No.128 of 1997. The dispute to O.S.No.255 of 1984 has attained finality. The suit was decreed by the Court after the remand order dated 11.12.2013 of this Court. The petitioners' appeal before the First Appellate Court and the order of this Court, have dismissed on 13.10.2014 in A.S.No.23 of 2014 and S.A.No.35 of 2015 was dismissed on on 01.04.2021. Since no further appeal has been filed by the petitioners, the issue has conclusively attained finality. Once decree had attained finality, the decree has to be executed in the manner known to law. The respondents/plaintiffs/decreed holders have thus initiated execution proceedings. In the proceedings also, the petitioners had attempted to delay the delivery by filing an application under Order 21 Rule 26 of CPC and



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further litigate by filing CRP.No.2036 of 2022 which was dismissed by this Court on 19.10.2022.

13. Therefore, there are no reasons to interfere with the order passed by the Court below in E.P.No.13 of 2021. That apart, the respondents/plaintiffs/decreed holders have also paid delivery batta pursuant to the impugned order. The dispute, which is the subject matter of O.S.No. 124 of 2021 before Sub Court, Sivakasi, is to be decided separately.

14. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

14.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

1. The Principal District Munsif,
Thirumangalam.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

dss

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