



C.R.P(MD)No.706 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.706 of 2023

and

C.M.P(MD)No.3267 of 2023

M.Michael

... Petitioner/Petitioner/
Third party

Vs.

U.Kalimuthu (Deceased)

Muniyandi (Deceased)

U.Arumugam (Deceased)

1.Veerammal

2.Irulayiammal

...Respondents 1 and 2/
Respondents 1 to 5/Petitioners

3.P.Paraman

P.Rajaiah (Deceased)

P.Chinnaiya (Deceased)

P.Subramanian (Deceased)

4.Ponnarasan

5.Paulraj



C.R.P(MD)No.706 of 2023

6.Ponmudi

7.Murugeshwari

8.Parameshwari

9.Rajendran

10.Ayyapparaja

11.Sundari

12.Dhanabakkiyam

13.Pandiyarajan

14.Rajasekaran

... Respondents 3 to 14/
Respondents 6 to 20/
Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order passed in E.A.No.unnumbered of 2023 in E.P.No. 295 of 1997 in O.S.No.493 of 1989 dated 08.03.2023 on the file of the District Munsif Court, Bodinayakanur and to number the above Execution application.

For Petitioner : Mr.R.Karunakaran

ORDER

The petitioner had filed an application under Rule 21 Order 58 of C.P.C in E.A.No.unnumbered of 2023 in E.P.No.295 of 1997 in O.S.No. 493 of 1989 on the file of the District Munsif Court, Bodinayakanur.



C.R.P(MD)No.706 of 2023

WEB COPY

2. It is the specific case of the petitioner that a collusive suit was filed by the plaintiff in O.S.No.493 of 1989, which was rightly dismissed by the Trial Court by its judgment and decree, dated 30.08.1990. However, the decision of the Trial Court, dated 30.08.1990 in O.S.No. 493 of 1989 was reversed by the first appellate Court by its judgment and decree, dated 16.09.1994 while passing the judgment and decree in A.S.No.61 of 1991. It is the specific case of the petitioner that neither the Government nor the defendants filed any appeal deliberately as a result of which, the land which is Sarkar poramboke measuring about 0.45 cents in Uppukottai Village, Bodinayakkanur Taluk, Theni District is being usurped by the plaintiff in O.S.No.493 of 1989.

3. That apart, it is submitted that the petitioner as a public spirited person approached the Bench of the Principal Court in W.P.No.9380 of 2019, wherein, the petitioner's representation, dated 18.09.2018 before the Tashildar, Bodinayakanur was directed to be considered. It is submitted that the petitioner also filed another writ petition as a public interest litigation in W.P.No.12175 of 2021 to restrain the respondents herein from taking possession of the Government land in Survey



C.R.P(MD)No.706 of 2023

No.344/1 measuring an extent of 0.45 cents comprised in New Survey No.666/5 at Uppukottai Village, Bodinayakanur Taluk, Theni District till the enquiry was completed by the Tashildar, Bodinayakanur. It is submitted that writ petition was disposed of by the First Bench of the this Court by its order, dated 03.06.2021, pursuant to which, the Tashildar in his detailed proceedings, dated 04.09.2021, bearing Reference No. 4815/2020/அ5 has concluded that the land in question was Sarkar poramboke.

4. It is submitted by the petitioner that the land in question is being used for public purpose and therefore, the attempt of the private respondents herein (plaintiffs) had to be stalled under and therefore, the petitioner filed an application for setting aside the order of pre-delivery of possession of the property in favour of the respondents therein. It is submitted that though the Court was inclined to dismiss the Civil Revision Petition filed by the petitioner in C.R.P(MD)SR.No. 12641/2023 by its order, dated 23.02.2023, the Court gave liberty to the petitioner to file appropriate application to safe guard the Government property before the appropriate forum. Hence, the petitioner has filed miscellaneous petition in unnumbered E.A. in E.P.No.295 of 1997, under



C.R.P(MD)No.706 of 2023

Order 21 Rule 58 of C.P.C., which has been wrongly rejected vide docket order, dated 08.03.2023.

5. While arguing the case, the learned counsel for the petitioner sought to impress that powers of this Court to interfere under Section 115 C.P.C is wide enough to interfere with the order passed by Execution Court. It is further submitted that Order 21 Rule 58 of C.P.C allows the third party also to raise objections to attachment of the property. That apart, during the course of hearing, the learned counsel for the petitioner admitted that the petitioner has also filed W.P(MD)No.4051 of 2023 to take action against the Government authorities for allowing the Government land to be usurped by private parties, the respondents herein. The said case was admitted on 27.02.2023 and was adjourned for hearing on 13.03.2023. However, it was not listed.

6. I have considered the arguments advanced by the learned counsel for the petitioner.

7. In my view, Order 21 Rule 58 is not applicable to the petitioner. Therefore, rejection of the unnumbered E.A. in E.P.No.295 of 1997



C.R.P(MD)No.706 of 2023

cannot be interfered with. In any event, the petitioner is canvassing the rights of the public in W.P.(MD)No.4051 of 2023, which is pending before this Court. Therefore, the present Civil Revision Petition is liable to be dismissed. Liberty is given to the petitioner to initiate proceedings to set aside the decree passed by the trial Court in A.S.No.61 of 1991 on 16.09.1994 in accordance with law.

8. With the above observations, the present Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2023

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

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Note: Issue order copy on 17.03.2023.

To

1.The District Munsif Court, Bodinayakanur

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.706 of 2023

C.SARAVANAN,J.

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C.R.P(MD)No.706 of 2023

15.03.2023