



C.R.P(MD)No.1166 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1166 of 2023

Pudur Therku Muthiapuram Kulakkattankurichi
Hindu Nadar Uravinmurai Kalvi Sangam,
(Registration No.3/2005),
Pudur,
Vilathikulam Taluk,
Thoothukudi District,
represented by its President,
Charmadurai.

... Petitioner/Petitioner/
Plaintiff

Vs.

Kamaraj

... Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for records and set aside the order of return dated 30.03.2023 passed in the execution petition in E.P.SR.No.358 of 2023 in O.S.No.38 of 2013 on the file of the District Munsif Court, Vilathikulam and to direct the District Munsif Court, Vilathikulam to take the execution petition on file, number the same and dispose of it in accordance with law on merits.

For Petitioner : Mr.J.Barathan



C.R.P(MD)No.1166 of 2023

ORDER

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The present Civil Revision Petition has been filed against the order of return, dated 30.03.2023 passed in the execution petition in E.P.SR.No.358 of 2023 in O.S.No.38 of 2013 on the file of the District Munsif Court, Vilathikulam and to direct the District Munsif Court, Vilathikulam to take the execution petition on file, number the same and dispose of it in accordance with law on merits.

2. The petitioner is aggrieved by the docket order passed by the District Munsif Court, Vilathikulam declining to entertain E.P.SR.No. 358 of 2023 in O.S.No.38 of 2013 filed by the petitioner pursuant to the judgment and decree in O.S.No.38 of 2013, dated 20.08.2018.

3. The facts on record indicate that the respondent herein had filed A.S.No.44 of 2018 before the Sub Court, Kovilpatti and partially succeeded whereby, there was a direction that the amount due from the respondent were to be deposited until final determination of the issue as to whether the petitioner or the rival parties were entitled to receive the rent.



C.R.P(MD)No.1166 of 2023

WEB COPY

4. The petitioner has already filed second appeal before this Court in S.A.(MD).No.584 of 2020. This Court has granted an interim stay on 11.12.2020.

5. The specific case of the petitioner is that the Sub Court, Kovilpatti, while passing A.S.No.44 of 2018 has failed to take note of the judgment and decree passed on 04.06.2018 in O.S.No.48 of 2014 filed by the rival society, namely, Pudhur Hindu Nadargal Uravinmurai Magamai Sangam, wherein, relief sought for by the society against the petitioner was turned and no further appeal has been rightly filed by the plaintiff therein against the judgment and decree passed on 04.06.2018 in O.S.No.48 of 2014.

6. In my view, the pendency of the second appeal at the behest of the petitioner will not bar the petitioner from filing of Execution Petition under Order 21 of C.P.C. If E.P. that was filed by the petitioner is maintainable pursuant to the judgment and decree obtained by the petitioner in O.S.No.38 of 2013 on 20.08.2016 and which was partially affirmed in A.S.No.44 of 2018 by the appellate Court, namely, Sub



C.R.P(MD)No.1166 of 2023

Court, Kovilpatti, to the extent the petitioner has lost, the petitioner is in appeal before this Court in S.A.(MD).No.584 of 2020.

7. Even as per Section 144 of C.P.C., the respondent will be entitled for restitution, if the decree is varied. Therefore, I direct the learned District Munsif Court, Vilathikulam to number the E.P. filed by the petitioner on 17.03.2023 and dispose of the same on merits and in accordance with law. Meanwhile, it is open for the petitioner to expedite the proceedings in S.A(MD)No.584 of 2020 before this Court. It is made clear that any observations made here in this order shall not be construed as a final determination of the rights of the petitioner or the respondent.

8. The present Civil Revision Petition stands allowed with the above observations. No costs.

28.04.2023

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

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C.R.P(MD)No.1166 of 2023

To

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- 1.The District Munsif Court,
Vilathikulam
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.1166 of 2023

C.SARAVANAN,J.

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C.R.P(MD)No.1166 of 2023

28.04.2023