



C.M.P.(MD) No.5846 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.M.P.(MD) No.5846 of 2023

in

C.R.P.(MD) SR. No.21256 of 2023

Selvam

... Petitioner

Vs.

1.Muniappan

Karuppiah (Died)

Anguchamy (Died)

2.Ponnuchamy

3.Bose

4.Chandra

5.Gnanavalli

6.Thamizharasi

7.Pothumponnu

8.Boopathy

... Respondents

Prayer in C.M.P.:- This Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 26 days in filing the above Civil Revision Petition.



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Prayer in C.R.P.:- The Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 04.11.2022 made in E.A.No.17 of 2021 in E.P.No.17 of 2015 in O.S.No.161 of 2007 on the file of the District Munsif Court, Sivagangai and set aside the same.

For Petitioner : Mr.R.Govindaraj

R1 : Party-in-person

For RR2, 3, 4, 6 & 8 : No appearance

ORDER

This Civil Miscellaneous Petition has been filed by the petitioner to condone the delay of 26 days in filing the above Civil Revision Petition.

2. The above Civil Revision Petition has been filed by the petitioner against the fair and decreetal order dated 04.11.2022 passed by the District Munsif Court, Sivagangai in E.A.No.17 of 2021 in E.P.No.17 of 2015 in O.S.No.161 of 2007.

3. According to the petitioner, the petitioner filed an application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 which was dismissed



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by the Executing Court without considering the objections made by the petitioner.

4. The learned counsel appearing for the petitioner would submit that the Executing Court ought to have seen that though the first respondent/plaintiff has claimed the entire suit properties belonging to his family, when those public utilities are available in certain portions, the parties to the suit being family members of the first respondent and subsequent purchaser, the entire property ought to have been surveyed and measured by a senior bailiff along with Surveyor and Village Administrative Officer.

5. It is therefore submitted that the Executing Court without appreciating the endeavour made by the petitioner to prevent miscarriage of justice in the event of ordering delivery of possession, erroneously dismissed the application filed by the petitioner *vide* order dated 04.11.2022, against which, the present Civil Revision Petition has been filed.

6. On the other hand, the first respondent/plaintiff who appears as party-in-person would submit that he filed the suit in O.S.No.161 of 2007 for partition of the suit properties, and declaration of Sale Deed as null and void



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and not binding on the first respondent/plaintiff and for mandatory injunction to demolish the house constructed in the suit property and to hand over the vacant possession of the suit properties. The first respondent/plaintiff would further submit that the Trial Court has decreed the suit and ordered the suit properties to be divided and allot 1/7th share to the first respondent/plaintiff and granted relief of the mandatory injunction for demolition of the house constructed in the portion allotted to the first respondent/plaintiff and also granted permanent injunction from alienating and encumbering any part of the suit parties to any third parties. However, the Trial Court has dismissed the prayer for cancellation of Sale Deed.

7. Against the Judgment and Decree passed by the Trial Court, the defendants preferred an appeal before the Sub Court, Devakottai in A.S.No.41 of 2010, whereas, the first respondent/plaintiff preferred an appeal in A.S.No. 42 of 2010. By a common Judgment and Decree dated 15.11.2010, the Sub Court, Devakottai allowed A.S.No.42 of 2010 filed by the first respondent/plaintiff and dismissed A.S.No.41 of 2010 filed by the defendants.

8. The defendants thereafter preferred the second appeal before this Court in S.A.(MD) No.683 of 2011 against the Judgment and Decree dated



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15.11.2010 passed by the Sub Court, Devakottai in A.S.Nos.41 & 42 of 2010.

The second appeal was also dismissed on 14.03.2012, thereby, the claim of the first respondent/plaintiff was confirmed.

9. The first respondent/plaintiff thereafter filed Execution Petition before the District Munsif Court, Sivagangai in E.P.No.17 of 2015. It is submitted that the District Munsif Court, Sivagangai by its order dated 18.08.2015 directed to hand over the vacant possession of the suit property to the first respondent/plaintiff. It is further submitted that the petitioner was preventing the first respondent/plaintiff from enjoying the fruits of the Judgments passed by the Courts for various reasons and therefore, the first respondent/plaintiff filed C.R.P.(MD) No.378 of 2021 for speedy disposal of E.P.No.17 of 2015. The said C.R.P. was disposed of by this Court *vide* its order dated 05.03.2021 with direction to the District Munsif Court, Sivagangai to dispose the E.P.No. 17 of 2015, within a period of three months from the date of receipt of a copy of that order.

10. The said E.P. is said to have been kept pending. Meanwhile, the petitioner who is the third party filed an application under Order 21 Rule 97 of the Code of Civil Procedure, 1908, in E.A.17 of 2021 in E.P.No.17 of 2015 in



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O.S.No.161 of 2005 to record his objection and obstruction and to dismiss the E.P. The said E.A. was dismissed by the Executing Court below *vide* its order dated 04.11.2022, against which, the present Civil Revision Petition has been filed by the petitioner/third party with a delay of 26 days.

11. The first respondent/plaintiff would further submit that no revision will lie against the order passed by the Executing Court in E.A.17 of 2021 in E.P.No.17 of 2015 in O.S.No.161 of 2005 and therefore, the present Civil Revision Petition is not maintainable. In support of the contention of the respondent/plaintiff, he referred to a decision of the Hon'ble Apex Court in the case of **S.Rajeswari Vs. S.N.Kulasekaran and others**, (2004) 4 SCC 412, in which case, it was held that “.... *the High Court exceeded its jurisdiction in entertaining a revision petition under Section 115 CPC against an order passed in proceeding under Order 21 Rule 97 CPC, even if we treat the application filed under Section 151 CPC to be an application under Order 21 Rule 97 CPC.*”

12. Heard the arguments. Perused the records and the above decision cited by the first respondent/plaintiff.



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13. In view of the decision of the Hon'ble Apex Court in the case of **S.Rajeswari** cited *supra*, it is clear that a revision cannot be entertained under Section 115 of the Code of Civil Procedure, 1908 as against the order passed by the Court in the application filed under Order 21 Rule 97 of Code of Civil Procedure, 1908. A reference is made to the Paragraph No.13 of the decision in **S.Rajeswari** cited *supra* which reads as under:-

“13.. . . Respondent 1 did not appeal to the High Court and instead preferred a revision petition under Section 115 CPC. We have no doubt that in view of the provisions of Order 21 Rule 103 CPC which provide for appeal against the order passed by the executing court in such matters, no revision could be entertained by the High Court against that order in view of the clear prohibition contained in Section 115(2) CPC, which in clear terms provides that the High Court shall not under Section 115 vary or reverse any decree or order against which an appeal lay either to the High Court or to any other court subordinate thereto. The High Court appears to have interfered with the order of the executing court because it was under the impression that a long drawn out litigation, perhaps engineered by the judgment-debtor, would result in great injustice, and therefore, if some relief could be granted by cutting short the procedure of appeal, etc. the power under Section 115 could be exercised to do justice between the parties. In our view, the High Court could not have acted in a manner contrary to the express provision of Section 115(2) of the Code of Civil Procedure. Since an appeal was provided under Order 21 Rule 103 of the Code of Civil Procedure which treated the order passed by the executing court as a decree subject to the same conditions as to appeal against such decree, a revision petition under Section 115 CPC



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against such an order is not maintainable. We must, therefore, hold that the High Court exceeded its jurisdiction in entertaining a revision petition under Section 115 CPC against an order passed in proceeding under Order 21 Rule 97 CPC, even if we treat the application filed under Section 151 CPC to be an application under Order 21 Rule 97 CPC."

14. Applying the above dictum laid down by the Hon'ble Supreme Court, the present Civil Revision Petition is made as not maintainable. Therefore, this Civil Miscellaneous Petition filed for condonation of delay is dismissed. Consequently, the present Civil Revision Petition is also dismissed at the S.R. stage itself.

31.07.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
The Judge,
District Munsif Court, Sivagangai.



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