



CRP (MD) No.1643 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	11.07.2023
Pronounced on	18.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1643 of 2023

and

CMP(MD)No.8180 of 2023

M.Jeyakumar

... Petitioner

Vs.

M.Ganesh Kumar

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 11.04.2023 made in E.A.No.3 of 2023 in E.P.No.459 of 2022 in O.S.No.924 of 2017 on the file of the II Additional Sub Court, Madurai.

For Petitioner : Mr.R.R.Kannan

For Respondent : Mr.Selva Aditya



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ORDER

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This civil revision petition is preferred as against the fair and decreetal order dated 11.04.2023 passed in E.A.No.3 of 2023 in E.P.No.459 of 2022 in O.S.No.924 of 2017 on the file of the Second Additional Sub Court, Madurai.

2. The plaintiff in O.S.No.924 of 2017 filed the above suit for partition of 1/4th share of the plaintiff in the suit property and to declare the settlement deed dated 18.04.2016 executed by the third defendant in favour of the second defendant as null and void and also for the relief of permanent injunction. The said suit was dismissed on 26.07.2022. Against which, the petitioner/plaintiff filed an appeal with a delay of 127 days in I.A.No.95 of 2023. The said application was allowed on condition to pay a cost of Rs.1,000/- to the respondent's counsel. During the pendency of the first appeal, the respondent filed an execution petition in E.P.No.459 of 2022 to execute the decree passed in favour of the him. While so, the petitioner came to know about the decree passed in the above suit only when the Court Officer came to the suit property to execute the decree. On perusal of the



case records, the petitioner came to know that no notice was issued to the petitioner/plaintiff in the suit, since the execution proceeding was initiated within two years. Therefore, delivery was ordered by the Executing Court. Hence, the petitioner filed an application before the Executing Court in E.A.No.3 of 2023 by stating that they have sufficient merit in their contention and therefore, there is every possibility for them to succeed in the appeal suit and prayed for to recall the order of delivery passed on 08.12.2022. However, the trial Court dismissed the above application, against which, the present revision is preferred.

3. The learned counsel appearing for the petitioner would submit that the petitioner is the brother of the respondent, who is residing in the ground floor of the suit property along with his family in the demised premises for the past several years. The specific contention of the revision petitioner is that no notice was served on him in the execution proceedings. Further, without affording reasonable opportunity to the petitioner, the execution application filed by the petitioner was dismissed by the Executing Court, which is liable to be set aside. It is further submitted that the suit filed by the



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petitioner in O.S.No.924 of 2017 was dismissed by the II Additional Sub Court, Madurai, on 26.07.2022, against which, the petitioner preferred the first appeal before the District Court, with the delay of 127 days. The application to condone the delay was allowed on payment of costs of Rs.1,000/- and therefore, before passing an order in the execution petition, the first appeal has to be decided. Hence, he prays for allowing this petition.

4. On the other hand, the learned counsel for the respondent would contend that no notice is required for execution of decree within two years. Therefore, no interference is called for in the order passed by the Executing Court.

5. Heard on both sides and records perused.

6. Order 21, Rule 35 CPC makes it clear in the event of application for execution being filed within two years from the date of the decree, the Executing Court is fully empowered to secure possession to be delivered to the decree-holder from the person in possession, who is bound by the decree



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and who refuses to vacate the property. Under Sub-Rule (3) of Rule 35, Order 21 C.P.C., if such person who is bound by the decree, does not afford free access, the Court can through its officers after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession. Thus, a conjoint reading of Order 21 and Rule 22 and Rule 35 C.P.C., makes it clear that in the event of the decree-holder approaching the concerned Execution Court within two years, after the date of the decree, he is entitled for recovery of possession by order of delivery without any notice being ordered to the judgment-debtor concerned. Therefore, if the execution petition is filed within two years after the date of decree, there is no necessity for the Executing Court to issue notice to the judgment debtor. Consequently, the order dated 11.04.2023 ordering for delivery is directly in accordance with law as the order granting execution without notice to the judgment debtor was in accordance with the provisions of Order 21 Rule 22 of CPC. Hence, that order cannot be set aside on the ground that no notice was served on the revision petitioner. Further, since the decree in O.S.No.



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924 of 2017 passed in favour of the respondent/plaintiff and also the respondent has taken steps to execute the decree, the same cannot be stalled for the reason that the revision petition has preferred an appeal against the decree passed in O.S.No.924 of 2017. Therefore, there is no interference found in the order passed in E.A.No.3 of 2023.

7. In view of the above discussions, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2023

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

The II Additional Subordinate Judge,
Madurai.



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