



C.R.P.(MD)No.610 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

C.R.P.(MD)No.610 of 2014

and

M.P.(MD)Nos.1 and 2 of 2014

Kamaraj

....Petitioner

Vs

1.Ganapathy (Died)

2.Mallika

...Respondents

(Second respondent was impleaded as legal heir of the first respondent vide order of this Court, dated 30.03.2023 in C.M.P.(MD)Nos.1418 to 1420 of 2021)

PRAYER: The Civil Revision Petition has been filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, dated 19.09.2013 passed in E.A.No.42 of 2011 in O.S.No.82 of 2000 on the file of the Principal District Munsif Court, Kumbakonam.

For Petitioner	: Ms.S.Vijaya Shanthi
R1	: Died
For R2	: Mr.S.Prabhu



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ORDER

The present Civil Revision Petition has been filed challenging an order passed by the Executing Court directing police protection to the decree holder to protect his possession of the property pursuant to a decree for permanent injunction.

2.The first respondent herein had filed O.S.No.82 of 2000 on the file of the Principal District Munsif Court, Kumbakonam, for the relief of permanent injunction. The said suit was dismissed by the Trial Court. The plaintiff had filed A.S.No.91 of 2002 on the file of the Additional Sub Court, Kumbakonam. The first appellate Court was pleased to reverse the judgment and decree and decreed the suit, as prayed for.

3.The decree holder had filed E.A.No.42 of 2011 before the Principal District Munsif Court, Kumbakonam, under Section 151 CPC alleging that the judgment debtor in violation of the permanent injunction, is causing disturbance to him and sought for police protection. The revision petitioner herein, as respondent, had filed a counter contending



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that the decree holder is not in possession of the property, but on the other hand, the judgment debtor continuous to be in possession of the property in the capacity of a cultivating tenant. The defendant had also placed on record an application submitted by him for registering himself as a cultivating tenant.

4.The learned Principal District Munsif, Kumbakonam, after considering the submissions made on either side, arrived at a finding that the judgment debtor has not challenged the judgement and decree passed in A.S.No.91 of 2002 and therefore, he cannot interfere in the possession of the property and police protection was ordered. Challenging the said order, the present Civil Revision Petition has been filed by the judgment debtor.

5.The learned Counsel for the revision petitioner had contended that the petitioner had taken steps to file a second appeal challenging the judgment and decree in A.S.No.91 of 2002 before this Court. She further contended that the decree holder was never in possession and enjoyment of the property and he has not filed any document to establish his possession



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over the property. She further contended that the revision petitioner has filed R.D.R.No.16 of 2010 for the relief of declaring himself as a cultivating tenant and the said application is pending before the Revenue Divisional Officer. Therefore, the Executing Court ought not to have ordered police protection without ascertaining who is in possession of the property.

6.Per contra, the learned Counsel appearing for the respondent/decreed holder had contended that the decree in A.S.No.91 of 2002 was passed on 20.01.2003 by the Additional Subordinate Court, Kumbakonam. Though twenty years have elapsed, so far no second appeal has been filed by the judgment debtor. He further contended that the revision petitioner is often causing disturbance to his possession and therefore, he was constrained to file a petition under Section 151 of CPC. He further contended that prior to the filing of E.A.No.42 of 2011, the decree holder had earlier filed E.A.No.67 of 2005 seeking police protection and the same was allowed. The said order was not challenged by the judgment debtor. Hence, he prayed for dismissal of this petition.



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7.I have carefully considered the submissions made on either side and perused the records.

8. There is no dispute that the revision petitioner has suffered a decree for permanent injunction by judgment and decree dated 20.01.2003 in A.S.No.91 of 2002 on the file of the Additional Subordinate Court, Kumbakonam. Though it is contended on the side of the revision petitioner that a second appeal has been filed, so far it has not seen the light of the day. The decree holder alleging disturbance to his possession in violation of the injunction decree had earlier filed EA.No.67 of 2005 seeking police protection and the same has also been ordered. The said order has not been challenged by the judgment debtor.

9. Alleging violation for the second time, the present E.A.No.43 of 2011 has been filed and allowed by the Executing Court on 19.09.2013. Though it is contended on the side of the revision petitioner that some steps have been taken to record himself as a cultivating tenant, so far no order has been passed by the revenue authorities. Therefore, at this point of time, there are no grounds to interfere with the order of the Executing



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Court in directing police protection.

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10.The Civil Revision Petition lacks merits and stands dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Internet : Yes/No

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To

1.The Principal District Munsif, Kumbakonam.

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

R.VIJAYAKUMAR, J.



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