



C.R.P.(MD) No.2087 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2023

CORAM

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

C.R.P.(MD) No.2087 of 2023

and

C.M.P.(MD) No.10433 of 2023

Nagaraj (Died)

1.Vaijiayanthi

2.M.Subramani

3.Sivaganga

4.N.Pushba

5.N.Santha

6.N.Sathish

7.N.Srinivasam

8.N.Rajeshwari

... Petitioners

Vs.

Sarojini (Died)

Sakila Begam

... Respondent



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Prayer: This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the fair and decretal order dated 13.07.2023 passed in E.P.No.21 of 2022 in O.S.No.672 of 2007 on the file of the Principal District Munsif Court at Karur.

For Petitioners : Mr.V.Meenakshi Sundaram

ORDER

This Civil Revision Petition is preferred as against the impugned order dated 13.07.2023 passed in E.P.No.21 of 2022 in O.S.No.672 of 2007 on the file of the Principal District Munsif Court at Karur.

2. According to the petitioners, the above suit in O.S.No.672 of 2007 was filed by the plaintiffs namely, one late Mr.Nagaraj and the first to third petitioners herein before the Principal District Munsif Court at Karur for a direction to one late Mrs.Sarojini, the defendant in the suit to surrender the vacant possession of the suit property to the plaintiffs.

3. The said suit was dismissed by the Trial Court by its Judgment and Decree dated 21.08.2009, against which, an appeal was preferred in A.S.No.76 of 2009 on the file of the Additional Sub Court, Karur. By the Judgment and Decree dated 31.03.2010, the first Appellate Court, i.e. Additional Sub Court,



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Karur reversed the Judgment and Decree dated 21.08.2009 passed by the Trial Court in O.S.No.672 of 2007 and directed the defendant to surrender the vacant possession of the suit property to the plaintiffs, against which, the respondent who is the legal heir of the defendant filed S.A.(MD) No.442 of 2010 before this Court.

4. This Court by the Judgment and Decree dated 30.03.2022 dismissed the second appeal with the following observations:-

10. In the case on hand, the lessee knew that after expiry of the lease period, vacant possession will have to be handed over. The improvements were not made with the consent of the landlord. Section 51 of the Act will apply only if the person making improvements his transferee of immovable property who believes in good faith that he is absolutely entitled thereto. A tenant simpliciter is not entitled to the benefit of the said provision. Therefore, the first substantial question of law is answered against the appellant. The plaintiffs are none other than the grandchildren of the original Sithoji Naidu. It is true that the property has been dedicated for religious purpose. Therefore, the plaintiffs are in the position of the trustees. They are very much entitled to recover the property in question. In fact, it is the duty of the trustee of the religious Trust to properly manage the Trust properties. The second substantial question of law is also answered against the appellant. The first appellate court has found that the suit notice is very much valid under Section 106 of the Transfer of Property Act. The said finding has not been shown to be incorrect. The third substantial question of law is also



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answered against the appellant. **The impugned judgment and decree passed by the first appellate court are confirmed. The second appeal is dismissed. Time for handing over the suit property to the respondents is six months. The appellant is directed to file an affidavit in this regard.** No cost. Consequently, connected miscellaneous petitions are closed.

5. Since the respondent failed to comply with the order passed by this Court in the second appeal to hand over the possession of the suit property to the plaintiffs within a period of six months, the petitioners who are the second to fourth plaintiffs and the legal heirs of the deceased first plaintiff filed E.P.No.21 of 2022 for execution of the decree. In the E.P. Proceedings, the respondent remained *exparte*. However, the Executing Court had dismissed the E.P. by observing that since already there is a direction of this Court in the Judgment and Decree dated 30.03.2022 passed in S.A.(MD) No.442 of 2010 to the respondent to hand over the possession to the petitioners within a period of six months and to the petitioners to file an affidavit in this record, the present E.P. is not maintainable.

6. The above observation of the Executing Court is incorrect. The petitioners are at liberty to file E.P. to execute the decree. Therefore, the impugned order dated 13.07.2023 passed by the Principal District Munsif



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Court, Karur is set aside and the matter is remitted back to the Principal District Munsif Court, Karur to dispose the E.P. on merits and in accordance with law.

7. Accordingly, this Civil Revision Petition is allowed by way of remand. No cost. Consequently, connected Miscellaneous Petition is closed.

22.08.2023

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

The Principal District Munsif,
Karur.



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K.GOVINDARAJAN THILAKAVADI, J.

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