



C.R.P.(MD) No.2025 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P.(MD) No.2025 of 2022

and

C.M.P(MD) No.9260 of 2022

R.Muthusamy

... Petitioner

Vs.

R.Gajendra Pandian

... Respondent

Prayer :- Petition filed under Section 115 of the Code of Civil Procedure, prays to set aside the fair and decreetal order in E.A.No.54 of 2022 in E.A.No.40 of 2022 in E.P.No.207 of 2022 in O.S.No.147 of 2007 on the file of the Sub Court, Oddanchatram, dated 19.07.2022 and allow this civil revision petition.

For Petitioner : Mr.T.Antony Arulraj



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For Respondent : No appearance

ORDER

This civil revision petition is preferred by the petitioner against the fair and decreetal order in E.A.No.54 of 2022 in E.A.No.40 of 2022 in E.P.No.207 of 2022 in O.S.No.147 of 2007 on the file of the Sub Court, Oddanchatram, dated 19.07.2022.

2. According to the revision petitioner, the revision petitioner as plaintiff filed the suit in O.S.No.147 of 2007 for the relief of declaration and for recovery of possession in respect of the schedule mentioned property, in which, an *ex parte* decree was passed against the defendants. Thereafter, the revision petitioner preferred E.P.No.4 of 2016 before the Sub Court, Palani, for executing the decree passed in O.S.No.147 of 2007. Accordingly, delivery order was passed. At the time of recording delivery, the Execution Petition was transferred to the Sub Court, Ottachandram for further proceedings and renumbered as E.P.No.207 of 2022. At that time, the respondent/second defendant preferred an



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application in E.A.No.40 of 2022, seeking not to record delivery on the ground that their belongings are kept inside the property. In the said application, the respondent/second defendant had made an endorsement that they have no oral evidence on their side. During pendency of the said application, another application in E.A.No.54 of 2022 was filed by the respondent/second defendant for reopening the application in E.A.No.40 of 2022 to adduce evidence on his side. The said application was allowed by the learned Subordinate Judge, Oddanchatram. Aggrieved by the said order, the present revision petition is preferred by the petitioner/plaintiff stating that while the evidence in E.A.No.40 of 2022 was closed based on the endorsement made by the respondent, the trial Court erred in allowing the application filed in E.A.No.54 of 2022.

3. The learned counsel for the petitioner would submit that the intention of the respondent/second defendant is only to prevent the Executing Court from recording delivery. Filing of the Execution Application for reopening evidence, is nothing but an abuse of process of law. Hence, the revision petitioner filed the above revision to set aside



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the fair and decreetal order passed in E.A.No.54 of 2022 on the file of learned Sub Court, Oddanchatram, dated 19.07.2022.

4. Though notice was served on the respondent, there is no representation on behalf of the respondent. Hence, this Court is proceeded to pass orders in the absence of the respondent.

5. On perusal of records, it is seen that an *ex parte* decree was passed against the respondent/second defendant. The plaintiff has filed E.P.No.207 of 2022 for executing the decree passed in O.S.No.147 of 2007, in which delivery was ordered and accordingly, delivery was also effected. At the time of recording the delivery, the respondent /second defendant has moved an application in E.A.No.40 of 2022 seeking not to record the delivery. The attitude of the respondent/second defendant in not participating the suit proceedings and thereafter, filing an application to stall the execution proceedings, is only to prevent the Executing Court from recording the delivery, which according to this Court, is nothing but an abuse of process of law. When the decree is in favour of the plaintiff,



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which has attained finality and delivery was also effected, the respondent/second defendant filing an application for adducing additional evidence, which was closed based on the endorsement made by the respondent, is nothing but shows the *mala-fide* intention of the respondent to see that the fruits of the decree shall not be enjoyed by the decree-holder / plaintiff. Hence, the trial Court ought not to have allowed the above application, which is only an abuse of process of law. Therefore, considering the facts and circumstances of the case, this Civil Revision Petition is allowed and the order the passed by the learned Subordinate Judge, Oddanchatram, in E.A.No.54 of 2022, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

05.07.2023

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

The Subordinate Judge, Oddanchatram,



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K.GOVINDARAJAN THILAKAVADI, J.

cp

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