



C.R.P.(PD)(MD).No.2160 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.2160 of 2018

and

C.M.P(MD) No.9568 of 2018

Thangarathi

... Petitioner/Claim Petitioner/
Third Party/Third Party

-VS-

1. Sathish

Son of Santhakunam
Umarikatu,
Korgai Village,
Srivaikuntam Taluk,
Thoothukudi District.

Thorugh his Power of Attorney
Santha Suresh,
Son of Santhakunam,
Umarikadu Main Road,
Korgai Village,
Srivaikundam Taluk,
Thoothukudi District.

... 1st Respondent/1st Respondent
Decree Holder/Plaintiff

2. Ambujam Ammal

... 2nd Respondent/2nd Respondent/
Judgment Debtor/1st Defendant



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PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 21.08.2018 passed in E.A.S.R.No.2505 of 2018 in E.P.No.21 of 2018 in O.S.No.332 of 2002 on the file of the District Munsif Court, Srivaikuntam.

For Petitioner : Mr.S.Anand Chandrasekar
M/s.Sarvabhauman Associates

For Respondents : Mr.M.R.S.Prabhu – for R1
: Mr.S.Sivathilakar – for R2

ORDER

The present Civil Revision Petition has been filed by a third party in O.S.No.332 of 2002, on the file of the District Munsif Court, Srivaikuntam, challenging the dismissal of an application filed under Section 47 of C.P.C in the Execution Proceedings.

2. According to the revision petitioner, the first respondent herein as plaintiff had filed O.S.No.332 of 2002 for the relief of declaration of title and recovery of possession. The suit was decreed by the trial Court and the same was confirmed by the first appellate Court, and it has reached finality. The plaintiff had filed E.P.No.21 of 2018 for taking delivery. Pending delivery application, the present Civil Revision Petition has been filed. In E.A.SR.No.



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2505 of 2018 purported to be an application under Order 21 Rule 58 of C.P.C.

The primary contention of the revision petitioner therein was that the suit schedule property was shown as a vacant site but whereas there was a huge building in the said suit schedule property in which her husband is the tenant. The husband was running a school in the said premises. Without showing any building, decree has been obtained and after the death of her husband she is running school. However, the trial Court had dismissed the claim petition on the ground that she is none other than the daughter-in-law of the judgment debtor. Therefore, such a claim petition is not maintainable. Challenging the same, the present Revision Petition has been filed.

3. A perusal of the application in E.A.SR.No.2505 of 2018 will clearly indicate that it is not an application either under Section 47 of C.P.C or under Order 21 Rule 58 of C.P.C. Being a third party to the suit, the said application is a claim petition under Order 21 Rule 97 of C.P.C. The order is a deemed decree under Order 21 Rule 103 of C.P.C. Therefore, only an appeal lies before the first appellate Court and revision as against the said order is not maintainable.



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4. In view of the above said facts, this Civil Revision Petition is dismissed with liberty to the petitioner to approach the appropriate appellate Court to file an appeal. The period spent between 25.09.2018 till 08.04.2024, before this Court, shall stand excluded, in case, the appeal is filed before the appellate Court. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

08.04.2024
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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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Note:

Registry is directed to return the original impugned order to the petitioner after getting necessary endorsement after retaining a copy of the same for record.

To
1. The District Munsif Court,
Srivaikuntam.



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R.VIJAYAKUMAR,J.

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