



C.R.P(MD)No.2085 of 2019

WEB CO BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD) No.2085 of 2019

and

C.M.P(MD) No.10859 of 2019

A.Sobha

...Petitioner

Vs.

F.John Narchesan

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.08.2019 passed in E.A.No.5 of 2019 in E.P.No.110 of 2018 in O.S.No.35 of 2017 on the file of the Principal District Judge, Kanyakumari at Nagercoil.



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For Petitioner : Mr.G.Thiruvartselvan

For Respondent : Mr.M.Kannan

ORDER

This Civil Revision Petition is filed against the order dated 09.08.2019 passed in E.A.No.5 of 2019 in E.P.No.110 of 2018 in O.S.No.35 of 2017 on the file of the Principal District Judge, Kanyakumari at Nagercoil.

2. Heard, Mr.G.Thiruvartselvan, learned counsel for the petitioner and Mr.M.Kannan, learned counsel appearing for the respondent and perused the material available on record.

3. The petitioner is the defendant in the suit and the respondent is the plaintiff in the suit.



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4. The learned counsel for the petitioner would submit that the learned Principal District Judge, failed to consider that the Execution Petition filed by the respondent only based on the *ex-parte* order and the *ex-parte* order also challenged by the petitioner by filing necessary application under Section 5 of the Limitation Act and a petition to set aside the *ex-parte* order and those petitions are still pending. When the said petitions are pending, without issuing any notice or intimation to the petitioner with an intention to cheat the petitioner, the respondent mentioned the wrong address of the petitioner and cheated the trial Court and obtained *ex-parte* decree.

5. The learned counsel further submits that the respondent approached the Court with unclean hands. The Lower Court ought to have allowed the application to set aside the *ex-parte* order, since the disputed property is the only dwelling house and the petitioner is no other way to reside except the property.



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6. On the other hand, the learned counsel for the respondent submits that the suit in O.S.No.35 of 2017 filed by the respondent was decreed on 11.12.2017 and no appeal has been filed against the said decree and it has become final. Subsequently, the respondent filed Execution Petition. In the Execution Petition, the petitioner was set *ex-parte*. Thereafter, the petitioner came up with a petition to set aside the *ex-parte* order dated 11.07.2019. The Execution Court holding that the reasons stated by the petitioner therein are not satisfied to set aside the *ex-parte* order dated 11.07.2019, as the petitioner is not entitled for the relief sought in the said petition, dismissed the E.A.No.5 of 2019, by order, dated 09.08.2019.

7. The learned counsel for the respondent further submits that the Execution Court having considered all aspects passed the order and interference of this Court under the Civil Revision Petition is not warranted and sought to dismiss the Civil Revision Petition.



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8. Having heard the submissions of the respective counsels and upon careful perusal of the material available on record, it is an admitted fact that the suit filed by respondent in O.S.No.35 of 2017 on the file of the Principal District Judge, Kanyakumar at Nagercoil, was decreed on 11.12.2017. At the time of passing the decree, the Trial Court granted time to the defendant i.e., the petitioner herein to hand over the possession of the petition mentioned property to the plaintiff on or before 10.02.2018. Admittedly, the decree has become final, as no appeal is filed. In spite of sufficient opportunity is granted to the petitioner, the petitioner did not turn up. Accordingly, the petitioner was set *ex-parte* on 30.06.2019 and *ex-parte* order was passed on 11.07.2019.

9. By following the judgment rendered by the Hon'ble Apex Court in ***Ramaparameshwari Devi Vs. Nirmala Devi*** reported in **2013 (3) LW - 97**, wherein, the Apex Court held that deprecating the dilatory tactics and the harassment of opposite party ultimately, resulting in wastage of Court's time and also unjust benefit to the



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wrong doer under the existing system of administration of civil litigation came down heavily to slap the exemplary cost of Rs.2,00,000/-, the Execution Court came to an opinion that the Court cannot shut its eyes to the deliberate and calculated strategies designated by the petitioner to over reach the majesty of Courts and the petitioner's ilk could not and should not be permitted to eat into the precious judicial time of the Court, the Execution Court held that the petitioner therein is not entitled for the relief and dismissed the E.A.No.5 of 2019, by order, dated 09.08.2019.

10. The learned counsel for the respondent also brought to the notice of this Court that the possession of the suit schedule property is not handed over to the respondent till now.

11. On consideration of the facts and circumstances of the case, it is clear that the petitioner is making every effort to drag on the proceedings without permitting the respondent to enjoy the fruits of the decree which is not permitted under law.



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12. In the considered opinion of this Court, the petitioner failed to make out any case and failed to show sufficient reason seeking interference of this Court in the Civil Revision Petition.

13. Accordingly, this Civil Revision Petition is dismissed.

14. No costs.

15. Consequently, connected Civil Miscellaneous Petition is closed.

10.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
RM

To

The Principal District Judge,
Principal District Court,
Kanyakumari at Nagercoil.



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BATTU DEVANAND, J.

RM

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