



CRP.(MD)No.2986 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 09.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CRP.(MD)No.2986 of 2023
and
C.M.P.(MD)No.15400 of 2023

Sugandhi

... Petitioner

Vs.

1.Periyasamy Gounder

2.Karuppusamy Gounder

3.Magudeeswaran

4.Periyathambi

5.Natchimuthu

6.Ganesan

Palanisamy(Died)

7.Dhandapani

Periyana Gounder @ Ayyavu (Died)

8.Periyasamy @ Subramani

Samiyappan (Died)



CRP.(MD)No.2986 of 2023

WEB COPY Perumal(Died)

9.Parvathy

10.Periyakkal

11.Chinna Periyakkal

12.Saraswathi

13.Poovathal

Ramathal(Died)

14.Vellaichamy

15.Sugandhi

16.Ramya

17.Seetha

... Respondents

Prayer : This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the Docket order dated 09.10.2023 passed in unnumbered E.A. of 2023 in E.P.No.10 of 2019 in I.A.No.378 of 2008 in O.S.No.230 of 2008 on the file of the learned District Munsif Court, Palani, Dindigul District by allowing this revision petition.

For Petitioner : Mrs.R.Shunmathi Priya



CRP.(MD)No.2986 of 2023

WEB COPY

ORDER

This civil revision petition is directed against the order passed in unnumbered E.A. of 2023 in E.P.No.10 of 2019 in I.A.No.378 of 2008 in O.S.No.230 of 2008 rejecting the petition filed under Order XXI Rule 97 CPC.

2.The plaintiffs have filed the above suit to declare that they are the absolute owners of the suit property and for permanent injunction restraining the defendants and their men from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property or in alternative, claiming partition and that the suit was decreed as early as on 17.03.1993 granting preliminary decree and thereafter, final decree came to be passed on 21.12.2018 and that the decree holders have laid the execution petition for delivery.

3. During the pendency of the execution petition, the revision petitioner, who is a third party, by alleging that she has purchased the property from the defendants 5 to 7 and 11 on 07.07.2018, has filed the



CRP.(MD)No.2986 of 2023

above petition to declare that she is the owner of the property and to dismiss the execution petition. The learned District Munsif, by observing that the purchaser pendente lite cannot invoke the provision under Order XXI Rule 97 CPC, that the suit was filed in the year 1986, that the preliminary decree was passed on 17.03.1993 and final decree was passed on 21.12.2018 and that the decree holders have been prevented from realizing the fruits of the decree for the past 30 years, has rightly rejected the petition as it has no merits.

4.The next contention of the petitioner is that the Execution Court ought to have numbered the petition, but without taking the petition on file, rejected the petition. At this juncture, it is necessary to refer the order of this Court passed in CrI.O.P.(MD)No.692 of 2023, dated 11.01.2023 (Kasi Vs.State), wherein after referring to the judgment of the Hon'ble Apex Court, has held that the impugned order therein cannot be found fault with and the relevant passages are extracted herein

“10.In Madiraju Venkata Ramana Raju Vs.Peddireddigary Ramachandra Reddy and Others reported in (2018) 14 SCC 1, the Honble Apex Court has specifically observed that if the Court on the presentation



CRP.(MD)No.2986 of 2023

of the plaint is of the view that the plaint does not fulfil the statutory and constitutional requirements, the plaint can be rejected either after admitting the plaint or even before admitting the same and that therefore, the trial Court has the power to reject the plaint even at the pre-registration stage. In the case of Saleem Bhai Vs. State of Maharashtra and Others reported in (2003) 1 SCC 557, the Hon'ble Supreme Court has held that a perusal of order 7 Rule 11 C.P.C makes it clear that the trial Court can exercise the power under Order 7 Rule 11 C.P.C at any stage of the suit, before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. When the Hon'ble Apex Court has reiterated the legal position that even the plaint can be rejected at pre-registration stage, this Court is at loss to understand as to why the same principle cannot be applied to the interlocutory applications.

11.No doubt, the above decisions were given in the civil proceedings and the said principle can also be applied to the miscellaneous applications filed in the criminal side. Generally, if any application is filed, the trial Courts are expected to number the petition and take the same on file, but that procedure cannot be applied in all cases. In case if the petitions are filed only with an intention to drag on the proceedings and to protract the trial, it cannot be stated



WEB COPY



CRP.(MD)No.2986 of 2023

that such petitions should be taken on file, notice to be given to the other side, counter or reply to be received, hear the arguments and then to pass orders. In the case on hand also, the learned trial Judge has specifically observed that this Court has already directed the trial Court to dispose of the case within the time stipulated.”

The above legal position is squarely applicable to the case on hand.

Hence, the impugned order rejecting the petition filed under Order XXI Rule 97 CPC cannot be found fault with.

5. In the result, this civil revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

09.11.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
gns



WEB COPY



CRP.(MD)No.2986 of 2023

To

The District Munsif Court,
Palani,
Dindigul District.



WEB COPY



CRP.(MD)No.2986 of 2023

K.MURALI SHANKAR,J.

gns

CRP.(MD)No.2986 of 2023

09.11.2023