



CRP No.644 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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M.Sarala Devi

... Petitioner

Vs.

Kutbuddin (died)

1. Dorai Pillai
2. Nijamuddin
3. Janaludin
4. Kareema
5. Zeenath
6. Khamruddin
7. Saidhanee
8. Saradhammal
9. Jayaraman

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order dated 17.04.2023 passed by the Principal District Munsif, Poonamallee in EA SR No.414/2023 in EA No.1/2022 in E.P.No.394/1985 in O.S.No.900/1970 and



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consequently direct the Principal District Munsif Court, Poonamalle to number the E.A.SR No.414/2023 and allow the same, without notice to the respondents.

For Petitioner : Mr.K.S.Viswanathan, Senior Counsel
for Mr.K.Senthilkumar

ORDER

This Civil Revision Petition has been filed to to set aside the impugned order dated 17.04.2023 passed by the Principal District Munsif, Poonamallee in EA SR No.414/2023 in EA No.1/2022 in E.P.No.394/ 1985 in O.S.No.900/1970 and consequently direct the Principal District Munsif Court, Poonamalle to number the E.A.SR No.414/2023 and allow the same, without notice to the respondents.

2. The petitioner herein is the plaintiff in O.S.No.900/1970 and to execute the decree passed in favour of her, she had filed E.P.No.394/ 1985. The above execution petition was dismissed on 08.07.2015 for the reason that “ delivery batta not paid ”. To restore the E.P.No.394/ 1985, the



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petitioner had filed E.A.No.1/2022 and it was also dismissed on 20.12.2022, as “batta not paid”. Again, to restore the E.A.No.1/2022, the petitioner has filed second restoration petition in E.A.SR No.414/2023 and the same was dismissed on 17.04.2023. Challenging the same, the present civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. According to the petitioner, though the petitioner had obtained decree as early as on 06.02.1973, and delivery order was also passed in E.P.No.394/ 1985, she is unable to enjoy the fruits of the decree, since the respondents/ obstructors have created lot of problems and given life threats to the bailiffs and other officials. The learned counsel for the petitioner submitted that, the petitioner is a senior citizen, aged 85 years old and she is having lot of health issues. The respondents, who are the trespassers, had encroached the property and enjoying the same for more than 53 years. He



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further submitted that, the petitioner had paid delivery batta from the year 2009 to 2013 nearly about 50 times, however, whenever the petitioner goes to the suit property along with bailiffs to execute the warrant, the respondents obstructed the same, thereby, the delivery warrant could not be executed.

5. It is contended by the learned counsel for the petitioner that, due to the health issues, the petitioner went USA along with her children to take treatment and thereafter, the petitioner came to know that E.P.No.394/ 1985 was dismissed on 08.07.2015, since delivery batta not paid. Therefore, to restore the above E.P., the petitioner has filed E.A.No.1/2022. In the E.A.No.1/2022, the counsel for the petitioner prayed the Executing Court to dispense with the notice to the respondents, since the E.P.was dismissed for non payment of delivery batta. However, notice was ordered, and subsequently, E.A.No.1/2022 was dismissed as batta not paid.



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6. The learned counsel for the petitioner further submitted that, to restore the E.A.No.1/2022, the petitioner has filed E.A.SR No.414/2023 along with batta, and also filed another application in E.A.No.415/2023 to dispense with the notice in the second restoration petition, viz., E.A.SR No.414/2023. However, without considering the averments made in the applications in proper perspective, the learned Judge has observed as “ *the petitioner side has not come forward to issue notice to other side and sought dispensation by filing another application, hence this petition is not maintainable and dismissed*”.

7. In the present civil revision petition, the petitioner, while seeking set aside the impugned order passed in EA SR No.414/2023, dated 17.04.2023, has prayed consequential direction of this court to the Executing Court to number the EA SR No.414/2023 and allow the same without notice to the respondents. But, this court is of the view that, such direction cannot be given to the Executing Court to allow the EA SR No.414/2023, without notice to the respondents.



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8. At this juncture, the learned counsel for the petitioner submitted that, the petitioner is ready to take batta and send notice to the respondents in E.A.No.1/2022 as well as the second restoration petition (EA SR No.414/2023), if it is numbered and taken on file for disposal. Therefore, appropriate direction may be given to the learned Executing Court to number the EA SR No.414/2023 and to pass suitable order thereon.

9. Considering the facts and circumstances of the case and also taking into account the submission made by the learned counsel for the petitioner, this court is inclined to set aside the impugned order passed in EA SR No.414/2023, dated 17.04.2023.

10. In the result, the impugned order passed in EA SR No.414/2023, dated 17.04.2023 by the executing court is set aside. The learned Principal District Munsif, Poonamallee is directed to number the EA SR No.414/2023



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and dispose of the same, after hearing both side counsel, within ten days from the date of receipt of a copy of this order.

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Index: Yes/No
Internet: Yes/No
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To

1. The District Munsif, Poonamallee.



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V.SIVAGNANAM, J.,

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