



C.R.P.No.322 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.322 of 2023
and CMP No.2725 of 2023

Sankar

.... Petitioner

vs

Nagooran

.... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and final order passed in E.A.No.21 of 2021 in E.P.No.23 of 2020 in O.S.No.115 of 1996 on the file of Principal District Munsif Court, Tindivanam dated 11.11.2022.

For Petitioner : Mr.C.Raja

For Respondent : Mr.Ruban Chakravarthy

ORDER

The Civil Revision Petition has been filed seeking to set aside the fair and final order passed in E.A.No.21 of 2021 in E.P.No.23 of 2020 in O.S.No.115 of 1996 on the file of Principal District Munsif Court, Tindivanam.



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2. The brief facts:

The petitioner is the 7th defendant in O.S.No.115 of 1996 filed by the respondent/plaintiff, seeking for declaration and recovery of possession. The suit was decreed on 20.11.2014. The respondent/plaintiff filed an execution petition in E.P.No.23/2020, seeking for recovery of possession. The petitioner/7th defendant was set exparte in the execution proceedings and an exparte order came to be passed in E.P.No.23/2020 on 07.01.2021. The petitioner/7th defendant has filed E.A.No.21/2021, seeking to set aside the exparte order passed on 07.01.2021 in E.P.No.23/2020. The petitioner has contended that since the petitioner was not served with notice in the suit, an exparte decree came to be passed in the suit against him and further, in the execution proceedings also, no notice was served on him. The petitioner was not living in the village during the relevant time and he was out of station,.

3. The respondent/plaintiff filed counter stating that the petitioner was a party to the suit in O.S.No.115 of 1996 and that he was examined as D.W.1 in the suit and he was aware of the orders passed in the suit and further, notice was



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sent to the correct address and no details have been given by the petitioner with regard to his place of residence and place of employment. The Executing Court, finding that the petitioner has not shown proper reasoning and also finding that E.A.No.21/2021 was filed only to drag on the proceedings, dismissed the application, against which, the present Civil Revision Petition has been filed.

4. Learned counsel for the petitioner would submit that the petitioner/7th defendant is a Mason by profession and he was engaged in centering work and he had to go various places, notice was not served on him in the suit and he was set exparte. Further, in the execution proceedings also, he was set exparte. Learned counsel further submits that the petitioner has filed first appeal against the judgment passed in O.S.No.115 of 1996 with an application to condone the delay and the same is pending.

5. Per contra, learned counsel for the respondent/plaintiff would submit that the suit was decreed on 20.11.2014. The petitioner/7th defendant had participated in the suit proceedings and he was examined as D.W.1. Having appeared before the court and examined as D.W.1, the petitioner/7th defendant



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has come out with false affidavit stating that no notice was served on him both in the suit as well as in the execution proceedings. Further, the petitioner/7th defendant has not stated in his affidavit that when he has returned to his village. The Executing Court, finding that the petitioner/7th defendant has not shown any sufficient cause, rightly dismissed the application, and therefore, the order passed by the Executing Court needs no interference and prays for dismissal of the revision.

6. Heard both sides and perused the materials available on record.

7. The petitioner is the 7th defendant in the suit in O.S.No.115 of 1996 on the file of Principal District Munsif Court, Tindivanam. The suit was tried along with O.S.No.167 of 2009 and after joint trial, the trial Court passed common judgment in O.S.Nos.115 of 1996 and 167 of 2009 on 20.11.2014. Admittedly, the petitioner was examined as D.W.1 in both the suits. At this stage, the petitioner/7th defendant cannot claim that he was not served with notice. Apart from that, the petitioner has not stated where he was all along and that no explanation has been shown as to how he is contesting the case on behalf of the



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other defendants.

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8. The trial Court, rightly finding that the petitioner has not shown sufficient cause to set aside the exparte order in the execution proceedings, dismissed the application. I do not find any error or irregularity in the order passed by Principal District Munsif, Tindivanam in E.A.No.21 of 2021 in E.P.No.23 of 2020 in O.S.No.115 of 1996 and thereby the Civil Revision Petition is liable to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2024

sr

Index:yes/no

website:yes/no

To

The Principal District Munsif Court, Tindiavanam.

A.D.JAGADISH CHANDIRA,J.,



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