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C.R.P.No.1210 of 2024.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1210 of 2024 and
CMP No.6312 of 2024

Vijayalakshmi

Vs.

... Petitioner

1. T.D.Padmavathy
2. Mohideen Meera

A.Mohammed Abdul Khader(deceased)

3. A.Mohammed Rasool
4. A.M.Noorddin
5. A.M.Nazina Bivi
6. A.M.Siddiq
7. A.M.Sheik Mansoor
8. A.M.Abdul Rahman
9. A.M.Shahul Hameed
10. Aysha Banu
11. K.R.Kamalakar

12. Ayub Nisha

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13. A.Aseena Malik

14. A.A.Ameen Malik

...Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair order of the IX Assistant City Civil Court, Chennai in E.A.Sr.No.87348 of 2023 in E.P.No.4727 of 2012 in O.S.No.7524 of 2010, dated 10.01.2024.

For Petitioner

:Mr.M.Ashwin Kumar

ORDER

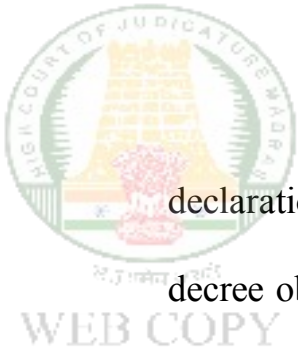
The Civil Revision Petition is filed challenging the order passed by the Executing Court dismissing the application filed by the petitioner under Order 21 Rule 99 r/w Order 21 Rule 101 of CPC even without numbering.

2. The 1st respondent herein filed a suit for recovery of possession against other respondents and obtained an *ex parte* decree and the same was put into execution by 1st respondent in E.P.No.4727 of 2012. The petitioner herein filed the instant application under Orde 21 Rule 99 read with Order 21 Rule 101 of CPC seeking a declaration that her husband one Kamalakar/judgment debtor (D11) was the lawful owner of the suit property



and also for a declaration that judgment decree made in original suit was null and void. The petitioner in her petition claimed that suit property was purchased by Kamalakar from A.M.Moideen and he in turn purchased the property in Court auction sale.

3. A reading of averments made by the petitioner in the present application would indicate that petitioner seeking declaration of title of her husband Kamalakar, who was defendant in the suit. In the impugned order, it is clearly mentioned by the Executing Court that husband of the petitioner, who suffered *ex parte* decree in the present suit filed an application to set aside the *ex parte* decree in I.A.No.44 of 2014 and the same was dismissed. Aggrieved by the same, the petitioner's husband Kamalakar preferred civil revision petition in CRP.No.4979 of 2014 and the same was dismissed. Challenging the dismissal of the civil revision petition, the petitioner's husband preferred special leave petition in SLP.No.2416 of 2020 and the same was also dismissed on 09.11.2021. Therefore, the right of Kamalakar was negated by the Trial Court and the same was confirmed by Hon'ble Apex Court in SLP.No.2416 of 2020. The petitioner in the instant application seeking



declaration of her husband's title and also declaration that the judgment and decree obtained by 1st respondent in the present suit was null and void. In the averments found in the present application, the petitioner has not claimed any independent right over the suit property and her claim is only based on the alleged title of her husband Kamalakar, which has already been negated by the Trial Court. When the petitioner is not able to claim any independent right over the suit property, the obstruction petition at her instance is not maintainable and the same was rightly rejected by the Executing Court. I do not find any error in the order impugned in this revision. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

19.03.2024

Index : Yes / No
Internet : Yes / No
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To

The IX Assistant City Civil Court, Chennai



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S.SOUNTHAR, J.

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