



C.R.P.No.775 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.775 of 2022
and CMP.No.3895 of 2022
and CMP.No.16471 of 2022

N.K.Kaliyaperumal

... Petitioner

Vs

1.R.Jayakumar
2.Rebeka
3.Reachal
4.Samuvel
5.Salsi

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of CPC praying to set aside the docket order in E.A.No.3 of 2022 in E.P.No.61 of 2021 in O.S.No.24 of 2011 dated 25.02.2022 on the file of learned Additional District Judge, Villupuram.

For Petitioner : Mr.M.Gnanamoorthy

For Respondents : Mr.S.Krishnaswamy



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ORDER

This civil revision petition arises against the rejection of application filed in E.A.No.3 of 2022 in E.P.No.61 of 2021 in O.S.No.24 of 2011 on the file of Additional District Court, Villupuram.

2. The suit in O.S.No.24 of 2011 was laid for specific performance of an agreement of sale entered into between one R.Jayakumar, the first respondent herein, and one Kamalanathan. Pending the proceedings, Kamalanathan passed away and his legal heirs were impleaded as defendants to the suit. The said suit ended in a decree in favour of Jayakumar. In order to execute the said decree, he filed a petition for execution before the learned Additional District Judge, Villupuram. In the said petition, the civil revision petitioner moved an application in E.A.No.3 of 2022 under Order XXI Rule 97 of CPC and that came to be dismissed.

3. A bare perusal of Order XXI Rule 97 would show that a petition is maintainable only at the instance of the decree holder who seeks possession of the property, or by an auction purchaser who moves an application for



delivery after having obtained a successful sale certificate. Order XXI Rule 97 does not contemplate any third party to maintain an application for obstruction. In fact reading with Limitation Act, every time the decree holder or auction purchaser is obstructed, 30 days time is given to him, in order to move an application seeking removal of obstruction. The provision does not enable a third party to move an application causing obstruction to the decree. This is the position of law as delivered in the judgement of this Court in ***M.Gopinath Pillai Vs K.Radhakirshnan and Others***, (2015) 1 Mad LJ 451. Apart from the issue on maintainability, the very same petitioner has moved E.A.No.92 of 2015 under Section 47 of CPC raising the very same averments in E.P.No.15/2015 in O.S.No.24/2011.

4. I have to point out here that E.P.No.15 of 2013 was filed by the decree holder for the purpose of obtaining a sale in his favour and E.P.No.61 of 2021 has been filed by the decree holder for the purpose of delivery of possession of property after having obtained the sale deed through process of Court. To complete the narration, E.A.No.92 of 2015 was dismissed by the learned Principal District Judge, Villupuram on 07.09.2019. The said order has become final. *Res judicata* applies at all stages of proceedings in a suit



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as well as in the execution. Having raised the same defence in E.A.No.92 of 2015 and suffered an order, it is not open to the very same third party to file a fresh application in E.A.No.3 of 2022. Both on merits as well as on the maintainability, I do not find any reason to interfere with the order of the learned Additional District Judge, Villupuram in E.A.No.3 of 2022 in E.P.No.61 of 2021 in O.S.No.24 of 2011.

5. To conclude, the revision stands dismissed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

29.04.2024

Index:Yes/No
Internet : Yes /No
Speaking order / Non-speaking order
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To:
1.The Additional District Judge
Villupuram.

2.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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