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C.R.P.No.1359 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1359 of 2024

and

C.M.P.No.7315 of 2024

1.Pachiammal
2.Ramasamy
3.Lakshmi
4.Gnanambal
5.Sudha

... Petitioners

Vs.

1.Narayanasamy
2.K.Ayyappan
3.A.Harish
4.A.Haripriya
5.A.Nandhini

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the order and decretal order passed in E.A.No.2 of 2023 in E.P.No.185 of 2022 dated 22.02.2024 by the learned II Additional Subordinate Judge, Coimbatore and allow the revision petition.



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For Petitioner : Mr.Silambanan, Senior Counsel
for Mr.R.Ramesh

For Respondent-1 : Mr.M.R.Thangavel

ORDER

This Civil Revision Petition has been filed challenging the dismissal order passed in E.A.No.2 of 2023 in E.P.No.185 of 2022 dated 22.02.2024 by the learned II Additional Subordinate Judge, Coimbatore.

2.The contention of the learned Senior Counsel appearing for petitioners is that the first respondent/decreed holder filed a suit against the respondents 2 to 5 in O.S.No.37 of 2012 for specific performance based on an unregistered sale agreement dated 29.08.2011. The first respondent colluded with respondents 2 to 5 filed the above suit to get an order in his favour. The second respondent was the auction purchaser of the schedule mentioned property in the public action conducted on 14.07.1990 and the sale was confirmed by the District Munsif Court, Tiruppur. The second respondent



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after obtaining the sale certificate through Court, ought to have filed a petition for delivery of possession within one year from the date of sale certificate issued by the Court, but the second respondent not filed any petition or suit against these petitioners till date and the trial Court not considered these facts and rejected the obstruction petition, which is not proper in the eye of law.

3.The learned Senior Counsel for petitioners submitted that the first petitioner's husband Palanisamy and his brother ponnusamy jointly purchased the suit property to an extent of 7.44 acres of land. Thereafter, they mortgaged half share of the suit property to one Karunanidhi and another half share to one Rajendran on 14.09.1965. The said Karunanidhi filed a suit in O.S.No.673 of 1981 pertaining to the half share of the total extent of 7.44 acres of land, on the file of learned Sub Judge, Tiruppur and obtained an *ex-parte* decree. Thereafter, public auction was conducted, the second respondent herein/K.Ayyappan purchased the property on 14.07.1990.



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Thereafter, the second respondent entered into an unregistered sale agreement with the first respondent/Narayanasamy on 29.08.2011. Since the second respondent not come forward to execute the sale agreement, the first respondent filed a suit for specific performance in O.S.No.37 of 2012 and obtained an *ex-parte* decree. Thereafter, E.P.No.181 of 2013 was filed by the first respondent to execute the sale deed and the same was executed on 26.05.2014 and thereafter E.P.No.185 of 2014 was filed by the first respondent for delivery of possession. Thereafter, on receipt of notice in E.P.No.185 of 2014, the petitioners came to know about the pendency of the proceedings and they filed E.A.No.2 of 2023, which came to be dismissed on 22.02.2024.

4.He further submitted that the petitioners have filed a civil suit in O.S.No.302 of 2022, which is pending. The property purchased by Palanisamy and Ponnusamy was settled in favour of the petitioners in the year 1981. Thereafter the petitioners are in possession and enjoyment of the



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property. He further submitted that in the I.A. proceedings, the petitioners produced around 40 documents to prove the fact that they are in continuous possession and enjoyment of the property.

5.The learned counsel appearing for the first respondent submitted that any proceedings challenging the order of Executing Court ought to be considered as an appeal as per Order XXI Rule 97 and Section 96 of C.P.C. He further submitted that the Hon'ble Apex Court in the case of *S.Rajeswari vs. S.N.Kulasekaran and others* reported in 2006 (3) CTC 171 has held that revision petition under Section 115 of C.P.C. is not maintainable in view of the provisions of Order XXI, Rule 103 of C.P.C., which provide for Appeal against the order passed by the Executing Court and there is an express provision Section 115(2) of C.P.C., since an appeal is provided under Order XXI Rule 103 of C.P.C., to treat the order passed by the Executing Court as a decree subject to the same conditions as to Appeal,



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against such decree, Appeal to be filed, consistently followed by this Court in the following judgments:

- (i) *C.Murugan vs. Dr.Thilagavathy and another* in *C.R.P.(NPD) Nos.2620 and 2621 of 2014*;
- (ii) *R.Iyyappan and others vs. Arulmigu Venkeeswaran Alagarperumal and Nagathamman Devasthanam, Vadapalani, Chennai and another* in *C.R.P.No.2785 of 2013*; and
- (iii) in the batch of Civil Revision Petitions in *C.R.P.SR.Nos.16904 to 16908 of 2024*.

6.The learned Senior Counsel for petitioners filed additional typed set of papers referring to the following judgments of the Hon'ble Apex Court:

- (i) *Shreenath and another vs. Rajesh and others* reported in *AIR 1998 SC 1827*;
- (ii) *N.S.S.Narayana Sarma and others vs. M/s.Goldstone Exports Pvt. Ltd. and others* reported in *AIR 2002 SC 251*; and
- (iii) *Jini Dhanrajgir and another vs. Shibu Mathew and another* reported in *(2023) SCC OnLine SC 643*.



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7.He fairly submitted that in the Apex Court judgment though revision has been challenged, it had not decided as to whether revision or appeal lie against Order XXI Rule 97 proceedings. He further submitted that without going into the merits, this Court may give liberty to the petitioners to file an appeal.

8.In view of the same, the Registry is directed to return the papers to the petitioners and the petitioners shall file an appeal within a period of three weeks from the date of return of papers. Till then, status quo to be maintained as regards the suit property. The respondent agreed to the same.

9.With the above observations and directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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M.NIRMAL KUMAR, J.

rsi

To

The II Additional Subordinate Judge,
Coimbatore.

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and

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