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C.R.P.No.2258 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2258 of 2024 &
CMP.No.11903 of 2024

A.Joseph

... Petitioner/Judgment Debtor

Vs

The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Sirang Street,
Vallala Sethakkathi Nagar,
Chennai – 600 001.

... Respondent/Decree Holder

PRAYER:- Civil Revision Petition filed under under Section 115 of the Civil Procedure Code, against the decree and order passed in E.A.No.2 of 2023 in E.P.No.39 of 2018 in O.S.No.4 of 1988, on the file of the learned District Munsif Court, Udhagamandalam, order dated 27.03.2024.

For Petitioner : Mr.S.Venkatesh

For Respondent : Mr.Mohammed Fayaz Ali
for Wakf Board

Page No: 1/8



C.R.P.No.2258 of 2024

ORDER

The petitioner challenging the dismissal order passed in E.A.No.2 of 2023 in E.P.No.39 of 2018, filed this Civil Revision Petition.

2. The contention of the petitioner is that the respondent filed O.S.No.4 of 1998 against the petitioner's mother Elizabeth Antony for eviction of the Suit property. The same was decreed in favour of the respondent vide decree dated 24.04.1990, which was confirmed by the Appellate Court in A.S.No.25 of 1990, by its order dated 20.09.1993, thereby, the decree holder filed E.P.No.39 of 2018 and in that the petitioner/judgment debtor filed Interlocutory Application in E.A.No.20 of 2023 to declare the decree as null and void and the same was dismissed by the Executing Court. Against which the present Civil Revision Petition.

3.The primary contention of the petitioner is that the petitioner is the resident of door No.130, of the subject land and the EP proceedings

Page No: 2/8



C.R.P.No.2258 of 2024

WEB COPY

initiated against the petitioner for claiming and recovery of property in Door No.131, 132, 133 of Ward No.XV. After this contention of the petitioner in the order passed in E.P.No.2 of 2023, the schedule of property shown as R.S.No.1817/4 (New R.S.No.1817/4A1) wherein New R.S.No.1817/4A1 included, which would show that the petitioner's property indirectly attempted to be included in the proceedings. He further referred to the Commissioner Report in I.A.No.531 of 2003 in O.S.No.176 of 2003, the Commissioner report states that the Suit Schedule Property is known as Cressell Cottage door No.130, but decree is otherwise. Now attempts have been made to somehow include the petitioner's property. Hence, he further produced a typed set of papers referring to the Sub-Registrar Office, giving guidelines value for property in R.S.No.1817/4A1 & R.S.No.1817/4A2 and in which the SRO stated that there is no such property bearing survey No.1817/4A, available. Thus, in the impugned order referring to such survey number was not proper. Therefore, the learned counsel appearing for the petitioner prays this Court to set aside the impugned order.

Page No: 3/8



C.R.P.No.2258 of 2024

WEB COPY

4.The learned counsel appearing for the respondent submitted that the impugned order is very clear and referring to para No.12 in the impugned order, he submitted that schedule property is of 15 cents of land along with building standing thereon bearing Door No.131, 132 & 133 of the Ward mentioned. Further, the Trial Court observed that only when Court Ameen goes to the petitioner's property, it can be found out that where the petitioner is in possession?, which properties are within the four boundaries stated in the decree within 15 cents of land mentioned in the decree. If the petitioner is not in possession of the property mentioned in the decree then the Ameen would return the warrant with the report to that effect. Therefore, the objection raised by the petitioner is premature, this findings safeguards the petitioner's right of contention if he is otherwise entitled to. Further, the learned counsel appearing for the respondent is referring to the written statement filed by the petitioner's mother against whom the suit filed. After the demise of the petitioner's mother, the petitioner stepped into the Suit as legal representative of the deceased. The learned counsel for the respondent

Page No: 4/8



C.R.P.No.2258 of 2024

WEB COPY

referring to paragraph 3, in the written statement, submitted that it is admitted that the petitioner's father late M.G.Mathew was a tenant under the respondent i.e., Tamil Nadu Wakf Board and the Suit property namely Cressell cottage was on a monthly rent of Rs.65/- and in and around 1942 late M.G.Mathew was inducted into possession by one Glen, who was in possession in the property. Ever since 1942, late M.G.Mathew was in possession and enjoyment of the plaint schedule property till he died in 1974. After the death of M.G.Mathew, Elizabeth Antony, the petitioner's mother continued to be in possession and enjoyment of the property and after Elizabeth Antony, the petitioner continued to be in possession.

5.This would confirm that the petitioner is staying in the suit property of the Wakf and the petitioner's contention is only imaginary trying to drag on the EP proceedings. He further referring to the Sub-Registrar report stating that there is no particulars with regard to Survey No.1817/4A, which cannot be considered now for the reason

Page No: 5/8



C.R.P.No.2258 of 2024

WEB COPY

that the impugned order was passed on 27.03.2024 and thereafter received report, after the impugned order. Further the Sub-Registrar is not the appropriate authority to give the particulars of sub-division of survey number of the property. It is vested with the revenue authorities not the Sub-Registrar.

6.Considering the submissions made and on perusal of the materials placed on record, this Court finds no reason to interfere with the impugned order on the ground that the nullity of the decree cannot be challenged before the Executing Court and the error in identification of property that the Suit property is not owned by petitioner/Judgment Debtor, at this stage is premature contention and therefore, the Civil Revision Petition fails and accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

Page No: 6/8



C.R.P.No.2258 of 2024

26.06.2024

WEB COPY

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Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

Page No: 7/8



C.R.P.No.2258 of 2024

M.NIRMAL KUMAR,J.

Pbn

To

District Munsif Court, Udhagamandalam

C.R.P.No.2258 of 2024 &
CMP.No.11903 of 2024

26.06.2024

Page No: 8/8