



C.R.P.No.2225 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2225 of 2024 and  
C.M.P.No.11742 of 2024

Tamilzharasi

... Petitioner

Vs.

Maya Mariyannam Temple, Kurukathi  
represented by its Hereditary Trustee,  
Ramalinga Mudaliyar,  
Kurukkathi Village,  
Kilvelur Taluk,  
Nagapattinam District.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in E.A.No.2 of 2023 in E.P.No.181 of 2022 in O.S.No.187 of 2012, dated 16.02.2024 on the file of the Court of District Munsif cum Judicial Magistrate, Kilvelur and allow the said E.A by allowing this C.R.P.

For Petitioner : Mr.A.Muthukumar

For Respondent : Mr.K.Suresh



C.R.P.No.2225 of 2024

## ORDER

WEB COPY

The respondent Temple/decreed holder filed suit in O.S.No.187 of 2012 against the petitioner/judgment debtor before the learned District Munsif, Nagapattinam and the suit was decreed in favour of the respondent Temple by judgment, dated 05.09.2017 directing the petitioner to vacate the temple property situated in survey No.61/1. Challenging the same, the petitioner preferred an appeal in A.S.No.33 of 2017 before the learned Subordinate Judge, Nagapattinam and the same was dismissed on 20.07.2020. Against which, the petitioner preferred second appeal in S.A.No.664 of 2020 before this Court and the same was also dismissed by judgment, dated 12.02.2021. Thereafter, the respondent Temple initiated execution proceedings in E.P.No.18 of 2022 before the learned District Munsif cum Judicial Magistrate, Kilvelur in which the petitioner filed E.A.No.2 of 2023 in E.P.No.18 of 2022 seeking appointment of Advocate Commissioner along with Surveyor to inspect the suit property and to file report along with sketch. The learned District Munsif cum Judicial Magistrate, Kilvelur *vide* impugned fair and decreetal order, dated 16.02.2024 dismissed E.A.No.2 of 2023 in E.P.No.18 of 2022. Aggrieved



C.R.P.No.2225 of 2024

over the same, the present civil revision petition filed by the petitioner.

WEB COPY

2.The learned counsel for the petitioner submitted that the petitioner residing in survey Nos.64/1 and 64/2 for more than forty years and her father-in-law and mother-in-law were residing there for fifty years. The property in which the petitioner residing is not situated in survey No.61/1 and the judgment and decree obtained by the respondent Temple has become void. Hence, appointing Advocate Commissioner to inspect the suit property in survey No.61/1 along with Surveyor is essential. Otherwise the petitioner would suffer loss and damage which fact was not properly appreciated by the Execution Court. Hence, he sought for setting aside the impugned fair and decreetal order.

3.The learned counsel for the respondent denied the submissions of the learned counsel for the petitioner referring to the judgment of this Court in S.A.No.664 of 2020 and submitted that the petitioner's contention all along is that the petitioner is residing in survey No.61/1, therefore, the respondent's claim that the property belonged to the respondent Temple and



the respondent Temple obtained possession of the property by virtue of the settlement deed is not correct. The Court below has not considered this aspect and wrongly considered the fact of the case on the basis of the patta issued by virtue of Ex.A1 for the Survey No.61/1, whereas the Survey number for Ex.A1 property is 59/1. Ex.A7 Muchalika was not executed by the petitioner herein. The signature found in Ex.A7 has been denied and the petitioner handed over signed blank papers to the temple for the purpose of getting electricity connection which has been projected against the her.

4.The learned counsel for the respondent referring to paragraph 9 of the finding of this Court in second appeal submitted that this Court had clearly given reason for the contention of the petitioner that survey No.61/1 is not a temple property cannot be countenanced and for what reason the petitioner handed over blank signed stamp papers to the temple authorities is not known. Further it had recorded that the petitioner is residing in survey No.61/1 and and Ex.A2-Patta for survey No.61/1 issued in the name of the respondent temple. The Village Administrative Officer examined as PW3 who deposed that the property in survey No.61/1 belongs to the respondent



C.R.P.No.2225 of 2024

temple. Hence, as per the final decree, Execution Proceedings initiated by the respondent temple. In view of the same, there is no reason for the petitioner to file petition seeking Advocate Commissioner for surveying the property in survey No.61/1. The specific contention of the petitioner that the petitioner is residing at property at survey Nos.64/1 and 64/2 is no way connected with the Execution Proceedings pending before the lower Court. Hence, the impugned fair and decreetal order, dated 16.02.2024 needs no interference.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner is residing in survey Nos.64/1 and 64/2 and the suit in O.S.No.187 of 2012 pertains to survey No.61/1 and the same belongs to the respondent temple which has been finally confirmed by this Court in S.A.No.664 of 2020. Now the Execution Proceedings initiated in survey No.61/1. The points raised by the learned counsel for the petitioner have already raised and answered by this Court in the second appeal.



C.R.P.No.2225 of 2024

WEB COPY

6.In the result, this civil revision petition stands dismissed confirming the impugned fair and decreetal order, dated 16.02.2024 in E.A.No.2 of 2023 in E.P.No.18 of 2022 passed by the learned District Munsif cum Judicial Magistrate, Kilvelur. Consequently, connected civil miscellaneous petition is closed. No costs.

27.06.2024  
(<sup>1</sup>/<sub>2</sub>)

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes

vv2

To

The District Munsif cum Judicial Magistrate,  
Kilvelur.



WEB COPY



C.R.P.No.2225 of 2024

M.NIRMAL KUMAR, J.

vv2

C.R.P.No.2225 of 2024

27.06.2024  
( $\frac{1}{2}$ )