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C.R.P.(NPD).No.2799 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2799 of 2019
and C.M.P.No.18334 of 2019

P.Sivakumar

... Petitioner

VS

1.C.Vetriveeramani

2.C.Elangovan

3.C.Pandiyan

4.C.Palaniraj

5.C.Jayabarathi

6.Sundaravadani

7.Sulochana @ Gowrinayagi (died)

8.Ethiraj

9.Kannan

10.Vasanthi

11.Krishnan

1/6



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12.Mahalakshmi

13.Kalyanasundaram

14.Chitra

15.Lakshmi

16.Arundhathi

17.Ragunathan

18.Mayavathi

19.Savithri

20.Sadasiva Chettiar

21.Ramachandiran

22.Thirumalai

23.Govindarajan

24.Mahalakshmi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 12.04.2019 made in E.A.No.48 of 2019 in E.A.No.98 of 2015 in E.P.No.57 of 2013 in O.S.No.112 of 1991 on the file of learned Principal Sub Judge, Puducherry.

For Petitioner : Mr.R.Thiagarajan



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For R1, R2, R5 : Notice Served

For R7 : Died

For R8 : Want of Door No.

For R6, R9 and
R20 to R24 : No Such Person

For R3, R4
and R10 : Notice Sent Service Awaited

For R11 to R19 : Door Locked

ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court allowing the application filed by 1st respondent-one of the legal heir of Decree Holder, to set aside the *exparte* order passed against him in E.A.No.98 of 2015 filed by the revision petitioner herein.

2. The 1st respondent's predecessor-in-interest namely Saradha @ Banumathi obtained a decree for partition and separate possession against the respondents 6 to 24. After passing of final decree in the partition suit, the legal heirs of original plaintiffs namely respondents 1 to 5 filed execution petition in E.P.No.57 of 2013 seeking delivery of the portions of Item-1 of the suit property as mentioned in the final decree. In the said execution petition,



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the petitioner herein filed obstruction petition in E.A.No.98 of 2015 and in the said obstruction petition, the 1st respondent was set *exparte* on 25.01.2016. The 1st respondent filed instant application to set aside the *exparte* order passed against her on 07.02.2019. The said application was allowed by the Executing Court and aggrieved by the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that though *exparte* order was passed against the 1st respondent as early as 25.01.2016, the instant application to set aside the *exparte* order was filed only on 07.02.2019. When 1st respondent failed to explain the delay, the Executing Court ought not to have allowed the application.

4. The 1st respondent is the legal heir of the deceased Decree Holder. The execution petition for delivery was filed in the year 2013 and the same was obstructed by the petitioner by filing E.A.No.98 of 2015. The said obstruction petition is still pending. Taking into consideration that the legal representatives of Decree Holder are unable to enjoy the fruits of the decree



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for several years and also the fact that the obstruction petition filed by the petitioner is still pending, the Executing Court exercised the discretion in favour of 1st respondent by allowing the petition to set aside the *exparte* order. I do not find any error in the order passed by the Executing Court exercising discretion in favour of 1st respondent/Decree Holder.

5. Accordingly, the Civil Revision Petition stands dismissed. No costs.

Consequently, the connected civil miscellaneous petition is closed.

20.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The Principal Sub Judge,
Puducherry.



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S.SOUNTHAR, J.

dm

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