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C.R.P.[NPD].No.2892 of 2024
and C.M.P.No.15381 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.2892 of 2024
and C.M.P.No.15381 of 2024

1.Palaniappan
2.Kandasamy

.. Petitioners

Vs.

Mookkayee Ammal

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 10.06.2024 made in E.P.No.42 of 2022 in O.S.No.1057 of 1994 on the file of the Principal District Munsif's Court, Kallakurichi.

For Petitioners : Mr.A.L.Ravichandran

For Respondent : Mr.K.A.Mariappan
for Mrs.G.V.Seethalakshmi

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 10.06.2024 made in E.P.No.42 of 2022 in O.S.No.1057 of 1994 on the file of the Principal District Munsif's Court, Kallakurichi.



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2.The brief facts of the case are as follows:

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2.1.The respondent/deGREE holder originally filed a suit in O.S.No.1057 of 1994, on the file of the Principal District Munsif's Court, Kallakurichi, seeking for the relief of permanent injunction in respect of certain items of the properties. The said suit has been decreed in respect of Item Nos.1 to 4, 8, 11 to 17 and declaration has been granted. However, the relief of permanent injunction has been negated as against the respondent. Challenging the decree of the suit, the appeal has been preferred by the Revision Petitioners/defendants in A.S.No.70 of 1997, on the file of the Sub-Court, Kallakurichi. The Appellate Court modified the decree by partly allowing the appeal in respect of Item Nos. 1 and 8 - 0.10 cents, in Item No.3 - 1/5th share in the Well and 5 HP motor pump-set, Item No.4 and Item Nos.11 to 17 and the Appellate Court has dismissed the suit in respect of Item No.2. Further, while modifying the judgment by confirming the declaration and the decree in respect of the above items, the Appellate Court has granted permanent injunction. As against the same, the petitioners/defendants preferred Second Appeal in S.A.No.43 of 2003 before this Court. This Court while confirming the judgment of the 1st



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Appellate Court, has clearly recorded that the respondent/decreed holder is not in possession of the property, therefore she is not entitled for injunction. However, in the decree of S.A.No.43 of 2003, by mistake it has been reflected as the judgment of the 1st Appellate Court is confirmed without mentioning about the setting aside the relief of permanent injunction. The respondent has filed Execution petition for delivery of possession and the same has been allowed. Aggrieved over the same, the present Civil Revision Petition has been filed.

3. Heard the learned counsel appearing for the petitioners as well as the respondent and perused the materials available on records.

4. Upon perusal, this Court is of the view that the fact remains that the decree has been passed in favour of the respondent/decreed holder in respect of the certain items of the properties only for declaration and permanent injunction and not in respect of delivery of possession. In the absence of any relief sought in the suit for recovery of possession, the delivery cannot be ordered. The Execution Court has mis-understood the entire Civil



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Procedural Code and allowed the execution petition for delivery of property when the decree itself is not for delivery of the property and the 1st Appellate Court has clearly recorded that the decree for declaration and this Court has confirmed the decree in respect of declaration. Even assuming that there was permanent injunction that will not give liberty to file Execution petition for delivery of possession.

5. Accordingly, the present Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

08.11.2024

rst
Index : Yes/No
Internet: Yes/No
Speaking/Non-Speaking Order



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To:

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The Principal District Munsif's Court,
Kallakurichi.



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N.SATHISH KUMAR, J.

rst

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