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C.R.P. (PD) .Nos. 3902, 3907 & 3927 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).Nos. 3902, 3907 & 3927 of 2024

&

C.M.P.Nos. 21369, 21381 & 21470 of 2024

C.R.P.No.3902 of 2024:

Suresh Kumar L.Kothari

...Petitioner

Vs.

1.Singamchetty Ateendrooloo Chetty's Charities by trustees

2.V.Ethiraj

3.V.Janardhana Rao

4.P.Madhusudhan

5.M.Srirama Prasad

6.Vootukuri Badrinarayana

7.Sri Pasumarthy Badrinath



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8.Sri.T.Anjan Kumar

9.R.Roop Kumar

10.Y.Suresh Babu

11.S.L.Siva Shanmugam

12.R.Lalitha

13.R.Ganesh

14.Vijaya Poorni

...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.1 of 2019 in O.S.No.4553 of 2016 passed by the XVIII Assistant Judge, City Civil Court, Chennai dated 10.08.2023.

C.R.P.No.3907 of 2024:

Umesh Kumar L.Kothari

...Petitioner

Vs.



1.Singamchetty Ateendrooloo Chetty's Charities by trustees

2.V.Ethiraj

3.V.Janardhana Rao

4.P.Madhusudhan

5.M.Srirama Prasad

6.Vootukuri Badrinarayana

7.Sri Pasumarthy Badrinath

8.Sri.T.Anjan Kumar

9.R.Roop Kumar

10.Y.Suresh Babu

11.S.L.Siva Shanmugam

12.R.Lalitha

13.R.Ganesh

14.Vijaya Poorni

...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.1 of 2019 in O.S.No.4555 of 2016 passed by the XVIII Assistant Judge, City Civil Court, Chennai dated 10.08.2023.



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C.R.P.No.3927 of 2024:

M/s.Doshi Industries
Rep. by its proprietor Mr.Jithendra Doshi,
S/o.Kunviriji Doshi,
No.25, Zinda Zahib Street,
Kondithope,
Chennai – 600079.

...Petitioner

Vs.

- 1.Singamchetty Ateendrooloo Chetty's Charities by trustees
- 2.V.Ethiraj
- 3.V.Janardhana Rao
- 4.P.Madhusudhan
- 5.M.Srirama Prasad
- 6.Vootukuri Badrinarayana
- 7.Sri Pasumarthu Badrinath
- 8.Sri.T.Anjan Kumar
- 9.R.Roop Kumar
- 10.Y.Suresh Babu
- 11.S.L.Siva Shanmugam



12.R.Lalitha

13.R.Ganesh

14.Vijaya Poorni

...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.1 of 2019 in O.S.No.4556 of 2016 passed by the XVIII Assistant Judge, City Civil Court, Chennai dated 10.08.2023.

For Petitioner : Mr. R.K.Ramaiah
(*In all petitions*)

COMMON ORDER

The Civil Revision Petition in C.R.P.No.3902 of 2024 challenges the order passed in I.A.No.1 of 2019 in O.S.No.4553 of 2016 passed by the learned XVIII Assistant Judge, City Civil Court, Chennai dated 10.08.2023.



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2. The Civil Revision Petition in C.R.P.No.3907 of 2024 challenges the order passed in I.A.No.1 of 2019 in O.S.No.4555 of 2016 passed by the learned XVIII Assistant Judge, City Civil Court, Chennai dated 10.08.2023.

3. The Civil Revision Petition in C.R.P.No.3927 of 2024 challenges the order passed in I.A.No.1 of 2019 in O.S.No.4556 of 2016 passed by the learned XVIII Assistant Judge, City Civil Court, Chennai dated 10.08.2023.

4. The civil revision petitioners are the plaintiffs in the respective suits. They took out an application seeking for stay of the proceedings initiated under Order XXI Rule 97 in E.A.No.3827 of 2016 on the file the IX Assistant City Civil Court, Chennai. The case of the civil revision petitioners is that they are in possession and occupation of the suit property for over several decades.



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5. The civil revision petitioners pleaded that the respondents 1 to 11 had initiated proceedings as against the respondents 12 to 14 seeking for possession of the property in O.S.No.4302 of 2007. The said suit ended in a compromise decree. To execute the same, E.P.No.1367 of 2014 was presented. At the time of execution of the decree, the respective civil revision petitioners obstructed the delivery of possession. This constrained the respondents 1 to 14 / decree holders to initiate proceedings for removal of obstruction in E.A.No.3827 of 2016.

6. Thereafter, the respective civil revision petitioners / plaintiffs presented O.S.Nos.4553, 4555 4556 of 2016, seeking for a declaration that the compromise decree in O.S.No.4302 of 2007 is not binding upon them and that it had been obtained by fraud and collusion and for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession of their properties. Pending disposal of the said suit, they took out applications for stay of



execution. By an order dated 10.08.2023, the said applications came to be dismissed. Hence, the revisions.

7. Heard Mr.R.K.Ramaiah for the civil revision petitioners. Mr.R.K.Ramaiah contends that as the compromise decree had been obtained between respondents 1 to 11 on one hand and respondents 12 to 14 on the other, it cannot be put into execution against the person in occupation of the property for over several decades. The plea of the plaintiffs is that on the date of the presentation of the suit O.S.No.4302 of 2007 they were in possession of the property. Hence, the decree for eviction obtained by respondents 1 to 14 is incapable of execution against them.

8. In terms of Order XXI Rule 101 of the Code of Civil Procedure, all questions including the issue of right, title or interest over the suit property would have to be adjudicated by the Executing Court. The decree holders in O.S.No.4302 of 2007 have already initiated proceedings under Order XXI Rule 97 of the Code of Civil



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Procedure for removal of obstruction. In case the petitioners want to set up title for themselves or plead that the decree is incapable of execution against them, the appropriate remedy for them is to contest the obstruction petition and obtain orders. In fact, in terms of Order XXI Rule 101 of the Code of Civil Procedure, the very suit is not maintainable. Unless and until the suit is maintainable, the question of granting interim orders does not arise. There is no prima facie case in favour of the petitioners. It is left open to the civil revision petitioners to agitate their rights in the application presented under Order XXI Rule 97 of the Code of Civil Procedure in E.A.No.3827 of 2016, which is pending before the learned IX Assistant City Civil Judge, Chennai.

9. In the result, the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

01.10.2024

Index : Yes/No
Internet : Yes/No
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To

The XVIII Assistant Judge,
City Civil Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

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