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C.R.P. No. 3449 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3449 of 2024

and

C.M.P. No. 18730 of 2024

Udasin Bavji Mutt rep by its
Mahant Basanthdoss Bavaji (died)

Swami Karshni Anubhavanand
(Present Madathipathi) (Contemnor)
Old No. 32H/33
Nellukara Street,
Annai Indira Gandhi Salai,
Big Kancheepuram.

... Petitioner / Respondent /
Judgment Debtor / Defendant

Vs.

Vanathatchi (Died)

... Plaintiff / Decree Holder

1. Thiligavathi

2. B.Revathi

3. B.Latha

... Respondents/ Petitioners /
Proposed Decree Holder 2 to 4

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908, against the order and decretal order passed in E.A. No. 1 of 2023 in E.P. No. Nil of 2023 in O.S. No. 445 of 2015 on the file of the Principal District Munsif at Kanchipuram dated 25.07.2024.



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For Petitioner : Mr. M.Muruganandam
for Mr. K.Jayalakshman

ORDER

The civil revision petition arises against the order of the District Munsif Court, Kanchipuram in E.A. No. 1 of 2023 in E.P. No. Nil of 2023 in O.S. No. 445 of 2010, dated 25.07.2024.

2. O.S. No. 445 of 2010 was filed by one Vanathatchi seeking for decree of permanent injunction restraining the defendant from interfering with her peaceful possession and enjoyment of the property.

3. The said suit was decreed by the Trial Court in and by way of judgment and decree dated 14.03.2016. The plea of the respondents is that the civil revision petitioner is interfering with the peaceful possession and enjoyment of the property. Hence, they filed E.P. for arrest and detention of the civil revision petitioner invoking the provisions of Order XXI Rule 32 of the CPC. Since they were not a party to the decree, they filed an application in E.A. No. 1 of 2023 seeking permission of the Court to recognise them as legal representatives of the deceased Vanathatchi. The said application was allowed. Against which, the present civil revision petition.



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4. Heard Mr. M.Muruganandam for the civil revision petitioner.

5. Mr. M.Muruganandam would submit that the legal representatives by virtue of clause 7 of the lease deed dated 06.09.2009 are not entitled to claim any lease hold right on the death of the original lessee Vanathatchi. He would further plead that the provisions relating to Order XXI Rule 11A have not been complied with.

6. I am afraid, I am not in a position to agree with the submission of Mr. M.Muruganandam. This is for the simple reason that in terms of Order XXI Rule 16 read with Section 146 of the CPC, a person who is the legal representative of the deceased plaintiff, who had successfully obtained a decree, is entitled to file an execution petition. Whether the execution petition is maintainable at the instance of the parties who have filed the execution petition is a matter which has to be agitated at the time of disposal of the execution petition. The said objections cannot be entertained at the time of numbering the said execution petition.

7. At the stage of numbering, all that the Court would look into is whether the petitioners are the legal representatives of the deceased and are



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they competent to represent the estate. If these two considerations are satisfied, the petition has to be numbered. This is the mandate of the Section 146 of the CPC. The learned Trial Judge seems to have followed the said mandate.

8. The arguments of Mr. M.Muruganandam on the maintainability of the execution petition can be addressed at the time the E.P. is taken up for disposal either by way of counter and by way of oral evidence.

9. These arguments are premature at the stage of numbering of the execution petition. Hence, I am not inclined to entertain, leaving it open to the judgment debtor to raise his pleas at the time of counter or the arguments of the execution petition or such other application including Section 47 that may be filed by the judgment debtor and the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

29.08.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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The Principal District Munsif at Kanchipuram.



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V.LAKSHMINARAYANAN, J.,

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