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C.R.P. Nos.3428 and 3430 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2024

Pronounced on: 28.10.2024

CORAM:

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.Nos.3428 and 3430 of 2023

and C.M.P. No.21264 of 2023

1. P. Ayyam Perumal S/o. Ponnusamy
 2. P. Raja S/o. Paramasivam
 3. M. Ameen W/o. Mohamed Hussain ...Petitioners / Third Party
[Petitioners Common in all C.R.Ps.]
- Vs.
1. J. Vanitha W/o. Late D. Jayaraman 1st Respondent / Decree
holder / Plaintiff
 2. The Commissioner,
The Corporation of Chennai,
Rippon Buildings, Chennai-600 003. 2nd Respondent / Judgment Debtor /
1st Defendant.
[Respondents common in all C.R.Ps.]

COMMON PRAYER in C.R.P. Nos.3428 and 3430 of 2023: Civil

Revision Petitions are filed under section 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.01.2023 passed in E.A. S.R. No.190 of 2023 and E.A. S.R. No.191 of 2023 in E.P. No.1224 of 2016 in O.S. No.1609 of 1996 on the file of the X Assistant City Civil Court, Chennai.

For Petitioners : Mr. N. Nithianandan
[both C.R.P.s]



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C.R.P. Nos.3428 and 3430 of 2023

For Respondents : Mr. A.R. Nixon [for R1]
[both C.R.P.s] Mr Raman Laal, Senior Counsel
for M/s. P.T. Ramadevi [for R2]
COMMON ORDER

These Civil Revision Petitions have been preferred as against the orders dated 23.01.2023 passed in E.A. S.R. No.190 of 2023 and E.A. S.R. No.191 of 2023 in E.P. No.1224 of 2016 in O.S. No.1609 of 1996 on the file of the X Assistant City Civil Court, Chennai.

2. These petitioners are third parties to the Suit and they filed a petition in E.A. SR No.190 of 2023 under Section 47 of Code of Civil Procedure to determine the questions of nullity of the exparte judgment and decree dated 29.11.2002 in O.S. No.1609 of 1996 on the file of XI Assistant City Civil Court, Chennai on the ground of fraud played on the Court by the 1st respondent to secure the said exparte decree dated 22.11.2002. Another petition was filed in E.A. S.R. No.191 of 2023 under Order XXI Rule 26 read with Section 151 of Code of Civil Procedure to stay all further proceedings in E.P. No.1224 of 2016 in O.S. No.1609 of 1996 pending disposal of the application filed under Section 47 of Code of Civil Procedure as well as the Suit in O.S. No.7961 of 2022 on the file of VIII Assistant City Civil Court, Chennai. The execution Court without numbering the petitions rejected the petitions through a detailed common order. Against which, the present civil



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revision petitions have been preferred by the petitioners.

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3. The learned counsel appearing for the petitioners would contend that these petitioners have filed a petition before the execution Court under Section 47 of Code of Civil Procedure to determine the questions of nullity of the exparte judgment and decree dated 29.11.2002 and also filed an application to stay the further proceedings. The execution Court without numbering the same, rejected the petitions by referring the merits of the case. The execution Court without hearing the parties, passed a detailed order as if the parties argued the case on merits. Therefore, the order passed by the execution Court is illegal and is liable to be set aside. While dismissing the EA maintainability, the Court below unnecessarily ventured to render findings on the merits of the case and it is also an admitted fact that the petitioners and other owners / occupants of the Vetri Nagar uses the subject property as Road and it is classified, as such, in all Government records. However, the subject decree directs delivery of the said property by persons other than judgment debtors i.e., the petitioners. As such, the petitioners are within their rights to object to execution proceedings. Therefore, they filed a petition under Section 47 of Code of Civil Procedure. But the Court below has erroneously rejected the petitions without even numbering the petitions and hearing the parties.



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Moreover, the disputed property is a Road and the decree holder obtained degree by playing fraud and suppressing the material facts, thereby, they filed the above said application, but without even numbering the petitions, the Court below rejected the petitions. Therefore, the orders passed by the Court below are liable to be set aside and the matter has to be decided on merits.

4. The learned counsel appearing for the 1st respondent would contend that already the 1st respondent has filed a Suit in the year 1996 itself and got decree in her favour and there is no any suppression of facts and the title of the property has already been decided by the competent Court and now the petitioners have, only to drag on the proceedings, filed these petitions. Already this Court, directed to deliver the property to the 1st respondent and thereby, the trial Court has correctly passed a detailed order and therefore, the orders passed by the trial Court is in order and the same is liable to be confirmed and the present revision petitions are liable to be dismissed.

5. The learned Senior Counsel appearing for the 2nd respondent would also supported the case of the petitioner by stating that the above mentioned disputed property belongs to the Government and is used as 'Road'. Suppressing the said fact, the 1st respondent obtained the decree and also



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filed execution petition for delivery of the property and the Executing Court without considering the merits of the case and without even numbering the petitions, rejected the petitions. Therefore, he also prayed to allow the petitions.

6. Heard both sides and perused all the materials available on record.

7. On perusal of records, it is observed that the 1st respondent has filed a Suit in O.S. No.1609 of 1996 on the file of XI Assistant City Civil Court, Chennai and the same was decreed on 29.11.2002 and thereafter, he filed an execution petition in E.P. No.1224 of 2016. In that execution petition, delivery was ordered. While pending execution petition, these petitioners have filed petitions under Section 47 of Civil Procedure Code and also filed an application under Order XXI Rule 26 read with Section 151 of Code of Civil Procedure to stay further proceedings. The Execution Court without numbering the said applications, rejected through a common order dated 23.01.2023. The Execution Court passed an elaborate order on merits.

8. When the Court below inclined to pass a detailed order, it is the duty of the Court to hear both parties after numbering the application. In the case



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on hand, the Court below has not even numbered the petitions and without giving opportunity to both the parties, rejected the case after going into the merits of the case. Once the Court decided to go into the merits of the case, it is the duty of the Court to give opportunity to both the parties, to hear and to dispose it on merits. If the Court is inclined to reject the application on other technical grounds, no need to go into the merits of the case and if the Court is inclined to touch the merits of the case, it is the duty cast upon the Court to hear the parties. In the case on hand, without hearing the parties, the Court below has passed an elaborate order on merits. Therefore, without going into the merits of the case, this Court is inclined to set aside the order passed by the Court below and remit the case back to the Court below to dispose the case on merits after numbering and affording opportunity to both the parties.

9. In the result, these Civil Revision Petitions are allowed and the common fair and decretal order dated 23.01.2023 passed in E.A. S.R. No.190 of 2023 and E.A. S.R. No.191 of 2023 in E.P. No.1224 of 2016 in O.S. No.1609 of 1996 on the file of the X Assistant City Civil Court, Chennai is set aside and the matters are remitted back to the Court below for fresh consideration after numbering the applications and giving opportunity to both the parties to dispose of the case on merits in accordance with law. No costs.



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Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To

1. X Assistant City Civil Court, Chennai.
2. The Commissioner,
The Corporation of Chennai,
Rippon Buildings, Chennai-600 003.

P.DHANABAL, J.,
mjs



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