



Crl.M.P. (MD) No. 12015 of 2023
in Crl.O.P.(MD) No. 775 of 2022

Crl.M.P.(MD) No. 12015 of 2023
in
Crl.O.P. (MD) No. 8846 of 2023

T.V. THAMILSELVI, J.

This Criminal Miscellaneous Petition has been filed to recall the order dated 17.05.2023 passed by this court in Crl.O.P.(MD) No. 8846 of 2023.

2. Heard both sides.

3. The petitioners are the 3rd and 4th respondents in Crl.O.P.No.8846 of 2023. The 1st respondent/deed holder filed the said Criminal Original Petition seeking to provide police protection to take possession over the share of property in Ward No.7, Block No.30, Survey No.1416/2, Kumbakonam Taluk, Thanjavur District, which was allotted to him as per the final decree passed in O.S.No.309 of 1987 on the file of the Principal District Munsif Court, Kumbakonam. As per the submissions made by the learned counsel for 1st respondent that the property was already delivered to him. When he attempted to take possession, the respondents/judgment debtors raised objection. Hence, he wanted to seek police protection. On considering that, this Court granted police protection by an order dated



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4. The learned counsel appearing for petitioners would submit that the petitioners, who are the respondents 3 and 4 in the execution proceedings in E.P.No.62 of 2019 filed this petition to recall the said order stating that on the date of filing the aforesaid Criminal Original Petition, the property was not delivered and possession also not taken through court of law and only based on the memo filed by 4th respondent/judgment debtor, the Executing Court ordered for delivery of possession, but possession was not taken by the 1st respondent/decreed holder through court of law. In the said circumstances, the order for police protection granted in his favour as such is erroneous one and the same is liable to be recalled.

5. By way of reply, the learned counsel for 1st respondent/Decreed holder would submit that a memo was filed by 4th respondent/judgment debtor, who is one of the sharer of the property before the Executing Court and based on the memo, the executing court passed an order as follows :-

“Advocate Mr. R.Balasubramaniam filed vakalat for R6.

Memo filed by R4. Stating that he is handed over the possession for first item of the suit property to the petitioner.



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Hence, first item property delivered. Hence delivery recorded regarding the first item of property. Counter of R1, R3, R6, R8 call on 11.07.2022”.

Now the learned counsel for petitioners would submit that in the first item of the property, the other respondents 1, 6 and 8 having share, but the learned counsel for 1st respondent raised objection stating that when the memo was filed by 4th respondent/judgment debtor, the other respondents have not raised any objection, but the Executing Court adjourned the matter to file objections for R1, R3, R6 and R8. In the said circumstances, the delivery recorded by the executing court without any evidence for handing over possession, as such it cannot be taken into consideration. Therefore, the order passed by this court is to be recalled, since no materials placed by the 1st respondent/decreed holder to take valid possession through court of law or from all the parties concerned.

6. On perusal of records, it reveals that since because the other respondents have not given consent for item No.1, except 4th respondent, other respondents have contested the case. Therefore, it cannot be recorded in respect of part of the respondents. Accordingly, as per the order passed by this court, as on date, delivery was not fully handed over to the petitioner



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on record. Therefore, the order passed by this court for police protection is recalled.

7. Furthermore, the learned counsel for 1st respondent relied on the ratio laid down by this court in the authorities reported in **2015 (2) L.W.999** in the case of ***S.Ashokan and others vs. State, rep. by the Commissioner of Police, The Greater Chennai, Vepery, Chennai-7 and others*** and in ***Crl.O.P.(MD) No. 16044 of 2022 dated 20.09.2022 and Crl.O.P.(MD) No. 17733 of 2019 dated 28.04.2022***. But the above referred authorities are not applicable to the facts of the present case. However, liberty is granted to the 1st respondent/decreed holder to work out his remedy to take delivery and possession of property before the executing court and he is also entitled to get police protection before the executing court as per manner known to law. Accordingly, this Criminal Miscellaneous Petition is allowed.

10.01.2024

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