



C.R.P.No.3769 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2024

CORAM

The Hon'ble Mr.Justice N.Sathish Kumar

C.R.P. No.3769 of 2024

and

C.M.P.No.20560 of 2024

R.Kannammal

... Revision Petitioner

Vs.

1. R.Vasu
- 2 R.Srinivasan
3. R.Elumalai
4. Rani
5. Jayachandran
6. J.Prakash
7. Kousalya
8. Dilli @ Geetha
9. Jayanthi
- 10.Munna @ Selvakumar

... Respondents

Prayer:-

Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in E.A.Sr.No.21014 of 2024 in E.P.No.4153 of 2022 in O.S.No.6140 of 2013 on the file of the IX Assistant City Civil Court, Chennai dated 23.07.2024.

For Revision Petitioner : Mr.S.Anil Sandeep
For Respondents 1 to 9 : Mr.K.P.Ashok
Respondent 10 : Notice served, none appeared



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ORDER

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This Civil Revision Petition is directed against the order passed in E.A..Sr.No.21014 of 2024 in E.P.No.4153 of 2022 in O.S.No.6140 of 2013 on the file of the IX Assistant City Civil Court, Chennai dated 23.07.2024.

2. By virtue of the impugned order passed by the Trial Court, the application filed by the revision petitioner under Order XX1 Rules 99 to 101 to obstruct the execution proceedings initiated by the respondents 1 to 9/decree holders was dismissed.

3. When the Civil Revision Petition is taken up for hearing, the learned counsel representing the counsel on record for the revision petitioner submitted that the revision petitioner died, hence, sought time to bring on record the legal representatives of the deceased revision petitioner. However, this Court, dismissed the Civil Revision Petition by observing that right of the revision petitioner (since deceased) to obstruct the execution of the decree by the respondents 1 to 9/decree holders, is not a heritable one. However, pursuant to the subsequent request made by the



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learned counsel on record for the revision petitioner, the matter was taken up again and heard.

4. The learned counsel for the revision petitioner submitted that revision petitioner filed the Obstruction Application on the basis of an alleged Will, which is stated to have been executed in her favour. By virtue of the said Will, neither the decree holders nor the judgment debtor has any right to oust the revision petitioner from the property. As a result of an adjudication against the respondent No.10/Judgment Debtor, who is the son of the revision petitioner, as she was not a party to such adjudication; that by the said alleged Will she has a sustainable right independent to that of the respondent No.10/Judgment debtor; that by means of the Obstruction Petition, she had never sought for the Executing Court to go beyond the decree, but, only sought to reserve her right to raise additional grounds in the Appeal. Therefore, the learned counsel insisted this Court to leave it open to the legal heirs of the revision petitioner (since deceased) to agitate their rights, in case, the Will is located in future.



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5. In view of the above submission, this Court is inclined to observe

herein that, a person, cannot, as a matter of right, cause obstruction to the execution of the decree merely on the strength of unproved Will, which is stated to have been executed in his/her favour, and was not in actual possession of the Will. However, taking into consideration of the request made by the learned counsel for the revision petitioner, who, would urge this Court to leave it open to the legal heirs of the deceased revision petitioner to agitate their rights, in case, the Will is located in future, this Court disposes of this Civil Revision Petition with the observation that, if at all, the Will is found, it is for the legal heirs of the deceased revision petitioner to establish their rights in a manner known to law.

6. This Civil Revision Petition is disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

09.12.2024

sd.

Index :yes/no



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To

IX Assistant Judge,
City Civil Court, Chennai.



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N.Sathish Kumar, J.

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