



C.R.P. No.3501 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

**C.R.P.No.3501 of 2023
and
C.M.P. No. 21852 of 2023**

The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai-600 003.

... Petitioner

versus

1. Sri Swamy Hathiramji Mutt,
rep. by its Mahant Sri Arjundoss,
Disciple of Devendradossji,
Tirupati, Andhra Pradesh

2. Ananthakrishna Babu,
3. Hamsa Bai
4. Suseendran
5. K.Krishnamurthy

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order of the learned judge passed in EA.SR.No.85772 of 2022 in E.A.No.6 of 2019 in E.P.No.725 of 1984 dated



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02.09.2022 in O.S.No. 587 of 1970 on the file of X Asst. Judge, City Civil Court, Chennai.

For Petitioner : Ms.P.T.Ramadevi

For Respondents : Mr.R.Selvakumar for R1

R2 to R5 – service awaited

ORDER

The Revision Petitioner herein is the third party in the above E.P.No.725 of 1984 in O.S.No. 587 of 1970. The 1st respondent herein is the decree holder and respondents 2 to 5 are legal heirs of original defendant Kesava Mudaliar. The revision petitioner herein is the Commissioner, Greater Chennai Corporation preferred this Civil Revision Petition challenging the order passed by the Executing Court in EA.SR.No.85772 of 2022 in E.A.No.6 of 2019 in E.P.No.725 of 1984 dated 02.09.2022 in O.S.No. 587 of 1970 on the file of X Asst. Judge, City Civil Court, Chennai.

2. The said application in E.A.SR.No. 85772 of 2022 has been filed by the petitioner/third party praying to review the order dated 31.01.2020 passed by the Executing Court in E.A.No. 6 of 2019 in E.P.No. 725 of 1984 under



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Order XXVI Rule 23 r/w Order XXVI Rule 10-A and Sec. 151 of C.P.C.

Before taking the case on file, the Executing Court decided the maintainability by hearing the argument on the side of revision petitioner and dismissed the said petition stating that the prayer sought by the revision petitioner to review the order in E.A.No. 6 of 2019 as such is not maintainable. Accordingly, the application was dismissed. Challenging the said finding, now the Civil Revision Petition has been filed.

3. Brief facts of the case :-

The original suit in O.S.No. 587 of 1970 was filed by the respondent/plaintiff for a declaration and recovery of possession against the defendant Kesava Mudaliar and the said suit was contested by the defendant. On hearing both sides, the trial court granted a decree in favour of plaintiff. Against which, the defendant preferred an appeal in A.S.No.96 of 1973 and the same was allowed and the decree was reversed. Against which, S.A.No. 6 of 1975 was filed, wherein the decree of appellate court was confirmed in the year 1978 in favour of plaintiff. To execute the same, the E.P.No.725 of 1984 was filed, in which delivery was ordered on 08.11.1986. Subsequently, the judgment debtor filed various petitions including petition under Sec.47 of C.P.C., thereafter, after the dismissal of Civil Revision Petition, the plaintiff



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took steps to execute the delivery warrant, but not able to execute the said warrant, since the said property is under the possession of 2500 occupants and they were represented by one Dr. Ambedkar Residents Welfare Association as a representative for the families residing in Ambedkar Nagar within the schedule of property. The obstruction petition made by the said Ambedkar Nagar also dismissed on 29.07.2019 in E.A.No. 2696 of 2012. Thereafter, the Executing Court passed an order to execute the delivery warrant directing the Commissioner, Greater Chennai Corporation shall coordinate with the District Collector, Tahsildar, Commissioner of Police, Inspector of Police, Royapettah, Assistant Engineer, and other revenue officials including TANGEDCO. While passing the order in E.A.No.6 of 2019 filed by the decree holder seeking to remove the obstruction, who occupied the E.P. Schedule of property, the Executing Court passed an order by giving a direction to the Commissioner, Greater Chennai Corporation/revision petitioner herein and the other officials viz., District Collector, Inspector of Police and other revenue officials. Thereafter, the meeting was convened headed by Commissioner including all those members. Furthermore, the revision petitioner found that while conducting the said E.P., the identification of property also necessary. The revision petitioner would submit that the legal heirs of deceased are not in



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possession of property, but, as per the decree, the decree was ordered against legal heirs of deceased defendant, however as on date, as per the report of Tahsildar, in the suit property more than 300 families were in possession of property in the name of Ambedkar Nagar. Furthermore, the Commissioner, Greater Chennai Corporation is not a party to the main suit as well as in the execution proceedings. Hence, they come forward with a petition to review the order passed by the Executing Court in E.A.No. 6 of 2019. But the learned judge without taking petition on file, had erroneously rejected, however, they are having valid reason to review the order. But without giving opportunity to the revision petitioner, at the initial stage, the application was dismissed by the Executing Court as such is unjust and improper and now prayed to set aside the order by allowing this Civil Revision Petition.

4. The learned counsel for 1st respondent/decreed holder/plaintiff would submit that in order to execute the delivery, the Executing Court gave a direction in E.A.No.6 of 2019 to all the revenue officials including Commissioner, Greater Chennai Corporation, since the properties were already under the occupation of 300 families. So, to remove the said obstruction, the assistance of Commissioner as well as police aid are necessary. Therefore, the Executing Court passed a suitable order by giving a direction to the revision



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petitioner and other officials to execute the delivery warrant considering the fact that more than 35 years, the E.P. is pending before the court without executing the delivery.

5. Heard and considered rival submissions of learned counsel for Revision Petitioner as well as learned counsel for 1st respondent and perused the materials available on record.

6. On considering the submissions made on the side of revision petitioner, the Commissioner, Greater Chennai Corporation is a third party to the suit proceedings prayed to review the order passed by the Executing Court for the reason that the Commissioner, Greater Chennai Corporation is not party to suit. Furthermore, they find difficulty in executing the delivery warrant and to submit a report before the court. Hence, they came forward with the present application to review the said order passed in E.A.No.6 of 2019.

7. On perusal of records, it reveals that to execute the delivery warrant, there was a request made on the side of decree holder to assist revenue officials along with police aid to execute the delivery warrant, but as rightly pointed out by the revision petitioner's counsel, now the judgment debtors are not in occupation of the property and nearly about 300 families are occupied in the suit property. So, they find some difficulty in executing the delivery warrant.



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Therefore, the reasons assigned by the revision petitioner is justifiable. Without giving opportunity to the revision petitioner, the Executing Court rejected the application filed by them as such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed. The Executing Court is directed to take the application in E.A.SR.No.85772 of 2022 on file within a period of two weeks from the date of receipt of copy of this order and to dispose the same on merit by giving opportunity of hearing both sides and dispose within twelve weeks. No costs. Consequently, the connected C.M.P. stands closed.

15.07.2024

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To

X Asst. Judge,
City Civil Court, Chennai.

T.V.THAMILSELVI, J.



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