



C.R.P. Nos. 3757 and 3759 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. Nos. 3757 and 3759 of 2022

and

C.M.P. No. 19816 of 2022

In both C.R.P.s

1. Kaliannan

2. Palanisamy

... Petitioners

Vs.

V.P.Govindasamy

... Respondent

PRAYER in C.R.P. No. 3757 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal order dated 27.07.2022 made in E.A. No. 3 of 2022 in E.P. No. 100 of 2008 in O.S. No. 161 of 1987 on the file of the District Munsif Court, Gobichettipalayam.

PRAYER in C.R.P. No. 3759 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal order dated 27.07.2022 made in E.A. No. 4 of 2022 in E.P. No. 100 of 2008 in O.S. No. 161 of 1987 on the file of the District Munsif Court, Gobichettipalayam.



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C.R.P. Nos. 3757 and 3759 of 2022

For Petitioners : Mr. N.Manoharan
(In both C.R.P.s)

For Respondent : Mr. S. Kaithamalai Kumaran
(In both C.R.P.s)

COMMON ORDER

These Civil Revision Petitions have been preferred as against the orders dated 27.07.2022 passed in E.A. No. 3 of 2022 and E.A. No. 4 of 2022 in E.P. No. 100 of 2008 in O.S. No. 161 of 1987, wherein, the respondent herein has filed petitions before the Execution Court to reopen the case of the 2nd respondent and to recall the respondent side witness.

2. According to the petitioners they are the decree holders in O.S. No. 161 of 1987 on the file of the District Munsif Court, Gobichettipalayam. The said decree was reversed by the Appellate Court through judgment dated 28.06.1991 in A.S. No. 81 of 1989 and thereafter, the second appeal was preferred in S.A. No. 1420 of 1991 and the same was allowed and the judgment of the Trial Court was restored. Thereafter, the petitioners filed E.P. No. 100 of 2008 for taking action against the respondents for their wilful disobedience of the decree. During the pendency of the second appeal, the subject properties were sold to the respondents and then filed claim



application along with the stay applications in E.A. Nos. 137 and 138 of 2011 respectively. The above said petitions were dismissed on 19.03.2012. Thereafter, the case was posted for orders on 13.06.2019. While so, the respondent herein has filed E.A. Nos. 3 and 4 of 2022 to reopen the case of the 2nd respondent and to recall the respondent side witness without any valid reasons. The said applications were strongly opposed by the petitioners but the Trial Court allowed those applications. Moreover, the documents sought to be marked were already marked as exhibits by the petitioners. Therefore, the reasons stated by the respondent are not genuine. But the Trial Court failed to consider the same and allowed the petition on payment of cost.

3. According to the respondent, he is the 2nd respondent in the main E.P. Before the Execution Court, the petitioners in order to prove that the property purchased by him through Palani Naicker was absolutely belongs to him and he has to produce the patta and adangal. The gift settlement deed was executed by the said Palani Naicker, without any right executed the settlement deed. Therefore, the said settlement will not binding upon the petitioners. Therefore, in order to mark the documents in respect of the properties of Palani Naicker, who is the vendor of the petitioner, the case has to be reopened. Already, the evidence of petitioner side was closed and on the side



of respondent in the E.P. the petitioner was examined as R.W.1 and also marked some documents. Therefore, he filed petition to reopen the case of the respondent in the main E.P. and to recall respondent side witness to mark the documents. The Trial Court correctly allowed the petitions on payment of cost of Rs. 1,000/-.

4. Before the Trial Court, no oral or documentary evidence adduced on either side. The Trial Court after hearing both sides, allowed the application on payment of cost of Rs. 1,000/-.

5. The learned counsel appearing for the petitioners would contend that the petitioners are the decree holders in O.S. No. 161 of 1987. The matter went up to Hon'ble High Court and as per the decree and judgment in S.A. No. 1420 of 1991, the property belongs to the petitioners. The petitioners have filed execution petition as against the respondents that they disobeying the order of the Court. In the said application, already the petitioners side witnesses were examined and on the side of respondents R.W.1 and 2 were examined and also marked documents. When the matter is posted for respondent side enquiry in the main E.P., the respondent herein has filed petition to reopen the case and to recall the respondent side witness for



marking additional documents. According to the respondents, they have to mark the documents viz., patta and adangal in the name of his vendor. But those documents were already marked on the side of petitioners. Therefore, those documents noway helpful to decide the case. But the Trial Court failed to consider the same and allowed the application. Therefore, the order passed by the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that the petitioners have filed main E.P. for arrest of the respondent and in order to prove their case that they have to file documents in the name of their predecessors. Already, on the side of respondents, R.W.1 and 2 were examined and some documents were marked. At the time of marking documents, the patta and adangal in the name Palani Naicker who is the vendor of the respondent have been omitted to be marked. Thereby, they filed the applications to reopen the case and recall the respondent side witness. The E.P. Court in order to give a chance, allowed the application on payment of cost of Rs. 1,000/-. Therefore, the order passed by the Execution Court is in order and the present Civil Revision Petitions are liable to be dismissed.

7. This Court heard both sides and perused the materials available on



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8. In this case, the respondent herein has filed petitions to reopen the case of the respondent side in the main E.P. and to recall respondent side witness. The petitioners were examined witnesses on their side and in order to mark some documents, respondent side evidence has to reopened and respondent side witness has to be recalled. On perusal of the records, the respondent herein has not stated about the correct particulars and only stated that the case was closed on 13.10.2018 and thereby, the case has to be reopened. There is no reference about how many witnesses were examined and which witness has to be recalled. No particulars in these petitions as about the stage of the case and examination of witnesses and there are vague averments. The Trial Court also did not considered the above said aspects. The respondents also have not stated about the witnesses examined in the E.P. Further, there is no reference about the documents in the petitions. Therefore, without any reasons and without any correct particulars, the petitions were filed. The Execution Court failed to consider the same and mechanically passed order that too when the case was posted for orders. Therefore, the orders passed by the Execution Court are unsustainable and the same are liable to be set aside.



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9. In the result, the Civil Revision Petitions are allowed by setting aside the orders dated 27.02.2022 made in E.A. Nos. 3 and 4 of 2022 in E.P. No. 100 of 2008 in O.S. No. 161 of 1978 passed by the District Munsif Court, Gobichettipalayam. No costs. Consequently, the connected Miscellaneous Petition is closed.

16.07.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The District Munsif Court,
Gobichettipalayam.



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P.DHANABAL, J.,

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