



C.R.P.No.4057 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.4057 of 2024
and C.M.P.No.22317 of 2024

Ganeshan @ Ganeshamoorthy

... Petitioner

Vs

1. A.C.B.Kunjappu

2. Subaitha

... Respondents

PRAYER : Civil Revision Petition filed Section 115 of the Code of Civil Procedure, pleased to set aside the order of return in E.A.SR.No.7432 of 2024 in E.P.No.80 of 2021 in O.S.No.235 of 2010 dated 19.09.2024 on the file of the learned 3rd Additional District Judge, Coimbatore.

For Petitioner : Mr.M.Devaraj

For Respondents : Mr.T.Balaji
for Mr.A.Thiagarajan



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ORDER

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2. It is the case of the petitioner that the petitioner is the 2nd defendant in the suit filed by the plaintiffs/respondents in O.S.No.235 of 2010 before the 3rd Additional District and Sessions Court, Coimbatore, seeking for a relief of declaring the sale agreement dated 11.02.2002 between the plaintiffs and 1st defendant as barred by limitation unenforceable and also delivery of possession of property and for damages. The suit was decreed on 20.09.2019 and the respondents/plaintiffs had filed an execution petition in E.P.No.80 of 2021 before the executing Court for execution of the decree passed on 20.09.2019. Meanwhile, against the decreetal order, the petitioner/2nd defendant has filed a first appeal in A.S.No.352 of 2021 before this Court and this Court, after hearing the arguments, has reserved the matter for judgment.

3. While so, the petitioner had filed a petition before the 3rd Additional



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District Court, Coimbatore, under Order 21 Rule 29 r/w Section 151 of CPC seeking to stay all the further proceedings in the execution petition, whereas, the Executing Court, even without numbering the petition, has returned the same on 19.09.2024 with an endorsement “1) *How this petition is maintainable. Hence returned.* 2) *A4 Sheet attached. Time one month.*” Challenging the same, the present Civil Revision Petition has been filed.

4. Learned counsel for the petitioner submitted that against the judgment and decree passed in O.S.No.235 of 2010, the petitioner had preferred an appeal in A.S.No.352 of 2021 before this Court and this Court, after hearing the arguments, has reserved the matter for judgment. Pending the first appeal, the petitioner has filed an application before the 3rd Additional District Court, Coimbatore, under Order 21 Rule 29 r/w Section 151 of CPC seeking to stay all further proceedings in execution petition, whereas, the executing Court has returned the same without numbering it. Thereby, he prayed to set aside the docket order dated 19.09.2024.

5. Per contra, the learned counsel for the respondents submitted that it is true that the petitioner has filed a first appeal in A.S.No.352 of 2021 before this Court



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and also sought for an order of interim stay of further proceedings in O.S.No.235 of 2010 and this Court, on 27.09.2022, has passed a conditional order directing the petitioner to deposit a sum of Rs.5 lakhs to the credit of O.S.No.235 of 2010 within a period of four weeks from the date of receipt of a copy of that order, however, since the petitioner has not complied with the order, the stay has not been extended further.

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

7. It is seen from the records that that the order under challenge is only a docket order, by which, the executing Court has returned the petition stating that how the petition is maintainable. Thereafter, the petitioner, without approaching the Court concerned and complying with the return, has straightaway rushed to this Court immediately after the first return and challenged the docket order. Taking into consideration the facts of the case, this Court finds that the revision against the return without compliance is not maintainable.

8. Accordingly, the Civil Revision Petition stands dismissed. However, the



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petitioner is directed to approach the Court concerned and comply with the returns and if necessary, he may also address the Court with regard to maintainability of the matter. Thereafter, the Executing Court is directed to hear the petition and pass orders on merits and in accordance with law. Consequently, connected miscellaneous petition is also closed. No costs.

03.10.2024

Index : Yes / No

Neutral Citation : Yes / No

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**Note : Registry is directed to return the original papers
to the counsel for the petitioner and issue order copy today.**
To

The 3rd Additional District Court, Coimbatore.



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A.D.JAGADISH CHANDIRA, J.

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