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C.R.P.(PD)No.4821 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM :

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4821 of 2024
and Crl.M.P.No.26918 of 2024

1.Selvi
2.Kalpana
[Legal heirs of Selvakumar (died)]

... Petitioners

Vs.

1.Saminathan
2.Muthusamy
3.Sankar
4.Prabhakaran

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 22.04.2024 passed in E.A.No.3 of 2024 in E.P.No.02 of 2009 on the file of the Principal Subordinate Judge, Tirupur.

For Petitioner : Mr.P.J.Sriganesh

ORDER

This Civil Revision Petition challenges the order passed by the learned Principal Subordinate Judge, Tiruppur in E.A.No.3 of 2024 in E.P.No.2 of 2009 dated 22.04.2024.



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2. The civil revision petitioners are the respondents 5 and 6 namely,

Selvi and Kalpana in E.A.No.3 of 2024. E.P.No.2 of 2009 came to be filed to execute a decree for specific performance that had been obtained by the first respondent herein against the respondents 2 to 4. The suit was decreed on 23.07.2008. Thereafter, the first respondent presented E.P.No.2 of 2009. After the suit had been decreed but before the execution was levied, the respondents 2 to 4 sold the property in favour of one Selvakumar. The civil revision petitioners are the legal representatives of the said Selvakumar.

3. Pleading that the decree passed in O.S.No.238 of 2007 is not binding on him, the said Selvakumar filed O.S.No.24 of 2010 on the file of the learned Subordinate Judge at Tiruppur. The suit is said to be pending. Meanwhile, the civil revision petitioners had presented E.A.No.2 of 2023, seeking for stay of E.P.No.2 of 2009, pending disposal of O.S.No.24 of 2010. The matter was posted to 08.01.2024 for filing of counter statement by the decree holder. On that day, the counsel on record for the decree holder could not be present in Court as he was sick. His junior colleague represented the matter and made an endorsement that *"Execution Petition may be dismissed with liberty to file a fresh petition"*. Recording the said endorsement, the learned Principal Subordinate Judge dismissed the E.P on 06.01.2024.



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4. On coming to know that the junior counsel had made an endorsement of withdrawal, an application was filed in E.A.No.3 of 2024, to recall the order passed in the execution petition on 06.01.2024 and to restore the same. This was opposed by the civil revision petitioners stating that there is no provision in the Code of Civil Procedure to restore or recall an order, when a proper endorsement had been made on the court bundle. They pointed out that the decree holder cannot plead that, unfortunately or inadvertently, the petition had not been pressed. This is because the decree holder had knowingly not pressed the said execution petition.

5. The learned Trial Judge allowed the application and restored the execution petition. Hence, this Revision.

6. Heard Mr.P.J.Sriganesh for the civil revision petitioners.

7. Mr.P.J.Sriganesh urges that the civil revision petitioners are *bona fide* purchasers of the property, without knowledge about the decree. They had, as early as 2010, presented a suit for declaration then the decree obtained in O.S.No.238 of 2007 is null and void and the suit is at the stage of trial. He



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further points out that no sufficient cause had been pleaded for setting aside the endorsement made by the junior counsel. Hence, he pleads that the revision be allowed and the order restoring the Execution Petition be set aside.

8. I have carefully considered the submission of Mr.P.J.Sriganesh.

9. Here is a case where the decree holder has been agitating his rights for the past 16 years. He obtained a decree in the year 2008 and had filed the execution petition for the year 2009 and he is yet to see the end of litigation.

10. It is specifically pleaded in the affidavit, that the counsel on record was sick and laid up in bed. The junior colleague, who had represented the counsel on record, had withdrawn the execution petition, without instructions from his senior. Whatever might be the reason for the junior counsel having made the endorsement, the contract that existed for representation in Court was between the decree holder and his senior. The Court should have been cautious to have obtained the endorsement from the senior counsel on record on 06.01.2024. Had the senior made the endorsement, I would have certainly agreed with the submission of Mr.P.J.Sriganesh. A counsel is empowered to present and withdraw the execution petitions in terms



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of order XXIII C.P.C. He acts on behalf of the party. Yet, this authority that exists between a counsel and his client cannot be extended to a junior counsel, attached to his office.

11. A Court is always empowered to correct its record when a mistake is brought to its notice. If no specific provision is available, the Court can always resort to Section 151 of the Code, which empowers it and pass such orders as may be necessary in the interest of justice.

12. The facts narrated above shows that the mistake had occurred on account of the error committed by the junior counsel, attached to the counsel on record. The error has been rectified and the parties have been restored to the position as they stood on 06.01.2024. Therefore, I do not find any reasons to interfere.

13. At this stage, Mr. P.J.Sriganesh points out that the learned Judge had restored the execution petition but not E.A.No.2 of 2003, which had been filed for stay, pending disposal of O.S.No.24 of 2010. When the execution petition is restored onto the file, any interlocutory application that was pending on that date, is also restored on to its file. Therefore, the fear of



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Mr.P.J.Sriganesh that his execution application had not been restored is unfounded.

14. The learned Principal Subordinate Judge at Tiruppur is requested to ensure E.A.No.2 of 2023 is disposed of within a period of twelve (12) weeks from the date of receipt of a copy of this order.

15. In view of the above findings, this Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

03.12.2024

Index : Yes / No
NCC : Yes / No
Anu

To
The Principal Subordinate Judge, Tirupur



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V.LAKSHMINARAYANAN,J.

Anu

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