



WEB COPY



C.R.P.No.4304 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07..11..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Revision Petition No.4304 of 2024

and

C.M.P.No.23922 of 2024

R.Kathirvel

..... Petitioner

-Versus-

R.Chinnasamy (Died)

1.Poongothai

2.Sangeetha

3.Thamaraikani

4.Chinnasamy

5.Kamaraj

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decree order dated 20.09.2024 made in E.A.No.9 of 2024 in E.P.No.48 of 2013 in O.S.No.190 of 2010 on the file of the Subordinate Judge, Perundurai, by allowing the civil revision petition.

For Petitioner : Mr.M.Guruprasad



C.R.P.No.4304 of 2024

WEB COPY

ORDER

This civil revision petition has been filed challenging the order dated 20.09.2024 passed by the executing court dismissing the Execution Application in E.A.No.9 of 2024 in E.P.No.48 of 2013 filed by the petitioner seeking permission to file a reply statement to the additional counter filed by the decree-holder.

2. The suit in O.S.No.190 of 2010 which was filed by one R.Chinnaswamy against M.Chinnaswamy and Kamaraj for declaration of title of the plaintiff to the suit schedule mentioned properties and recovery of possession. The said suit was decreed ex parte on 10.01.2013. After the decree, the said R.Chinnaswamy (plaintiff) died, and an execution petition was filed by the legal heir of plaintiff R.Chinnaswamy under Order XXI, Rule 11(2) of CPC, which was numbered as E.P.No.48 of 2023 in O.S.No.190 of 2010. Pending that execution proceeding, the revision petitioner, who is a third party, claiming to be the tenant under the respondents 4 and 5 herein from the year 2000 onwards, filed an application in E.A.No.7 of 2023 in E.P.No.48 of 2013 under Order XXI, Rule 97 of the Code of Civil Procedure seeking to record



C.R.P.No.4304 of 2024

the resistance and obstruction in the Execution Petition in view of his lawful

WEB COPY

possession over the suit properties, which has been pending for adjudication. In the said petition, a counter has been filed by legal heirs of the decree holder. An additional counter has also been filed contending, inter alia, that the petitioner is colluded with the judgement debtors to prevent the execution proceedings. Thereafter, the revision petitioner filed an application in E.A.No.9 of 2024 under Order VIII, Rule 9 of CPC r/w 151 of CPC, seeking permission to file a reply statement to the additional counter in E.A.No.7 of 2023, but the same was dismissed by the executing court. Hence, this revision.

3. Heard Mr.M.Guruprasad, learned counsel for the civil revision petitioner.

4. The trial court dismissed the application on the ground that denial of the facts set forth in the additional counter did not always have to be disputed only by way of reply statement, and such averments could even be denied in the proof affidavit. Further, the trial court held that though the petitioner has let in evidence as P.W.1 in E.A.No.7 of 2023, under law, he still has sufficient opportunity to let in additional evidence to counter the allegations made in the additional counter.



C.R.P.No.4304 of 2024

WEB COPY

5. At the outset, this court is of the view that it is the specific stand of the revision petitioner that he has been the tenant under the judgement debtor since 2000. In that pretext, he filed an application to record his obstruction in the execution petition filed for recovery of possession. When the specific plea has been taken that he is the tenant, it is for him to establish such a plea in the manner known to law. Merely because an additional counter has been filed, to contend that the decree-holders colluded with the judgement-debtors, there need not be any further reply statement. The petitioner can very well establish the tenancy right independently. This court thus does not find any merit in the revision petition, and the order passed by the execution court does not require any interference at the hands of this court.

In the result, this civil revision petition is dismissed. The learned Subordinate Judge, Perundurai, shall expedite the disposal of execution proceedings in E.P.No.48 of 2013 and dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

Index : yes / no

07..11..2024



C.R.P.No.4304 of 2024

Neutral Citation : yes / no

kmk

WEB COPY

To

1.The Subordinate Judge, Perundurai, Erode District.



WEB COPY



C.R.P.No.4304 of 2024

N.SATHISH KUMAR.J.,

kmk

C.R.P.No.4304 of 2024

07..11..2024