



WEB COPY



C.R.P.(PD)No.4466 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4466 of 2024
and C.M.P.No.24920 of 2024

C.Parimaladevi

.. Petitioner

Vs

1. A.Ravi
2. Saraswathy
3. Sathiyavani
4. Seethalakshmi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 29.08.2024 passed by the Principal District Court at Chengalpet in E.A.No.5 of 2024 in E.P.No.113 of 2018.

For Petitioner : Mr.F.Wellington

ORDER

This civil revision petition arises against the order of the learned Principal District Judge at Chengalpet in allowing the application filed under Order XXI Rule 106 of the Code of Civil Procedure.



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2. O.S.No.81 of 2010 is a suit for foreclosure of a mortgage against one Panneer Selvam. The suit came to be decreed. A final decree application was filed and that was allowed. After having obtained a final decree, the plaintiff/decreed holder filed E.P.No.113 of 2018. In the meantime, as the judgment debtor had passed on, the civil revision petitioner was impleaded as one of the legal representatives of the deceased Judgment debtor.

3. The civil revision petitioner was served with summons in the proceedings and remained *exparte*. An *exparte* order was passed on 11.08.2023. An application was filed in E.A.No.5 of 2024 on 21.08.2023 to set aside the *exparte* order.

4. The learned Judge, considering the plea of the party/civil revision petitioner, allowed the application on deposit of Rs.10 lakhs and granting two months time for the civil revision petitioner to deposit the amount. Pleading that the condition imposed by the learned Judge is onerous, the civil revision petitioner is before me.



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5. I heard Mr.F.Wellington for the civil revision petitioner and I

have gone through the records.

6. The narration of the facts would go to show that the decree holder presented a suit as early as 2010 as against the original mortgagor. The suit was decreed and no appeal has been preferred as against the said decree. A final decree application was filed and the final decree was passed and still no appeal was preferred. E.P. was presented and is pending for the last six years. The civil revision petitioner claims that she is succeeded to the estate of the judgment debtor by virtue of a “Will” executed by the judgment debtor in her favour. A beneficiary of a “Will” not only takes the benefit under the “Will”, but also has to bear the liability that comes along with it.

7. Mr.F.Wellington pleads that the creation of the mortgage in favour of the plaintiff/decreed holder itself is bad. That is not a plea which can be raised by a legal representative, when the original defendant himself, had not raised that plea. Further an Executing Court cannot be behind the decree and oust pleas which tend to nullify the same.



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8. In any event, the learned Judge has balanced the interest of the civil revision petitioner as well as that of the decree holder and has only directed the civil revision petitioner to deposit less than 1/3rd of the decree amount. In fact, the learned Judge has not directed the civil revision petitioner/judgment debtor to pay the amount to the decree holder. The said condition has been imposed only to ensure that the judgment debtor co-operates with the Court for the disposal of E.P.No.113 of 2018. I do not find any reasons to interfere with the order of the learned trial Judge as the condition is not onerous. The civil revision petition stands dismissed.

9. Since the petitioner was prosecuting this revision challenging the order of the learned Judge passed in E.A.No.5 of 2024 in E.P.No.113 of 2018, dated 29.08.2024, time to deposit is extended till 19.12.2024. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No

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To

The Principal District Judge at Chengalpet.



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V. LAKSHMINARAYANAN,J.

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