



C.R.P.[NPD].No.4726 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 20.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4726 of 2024 & CMP.No.26389 of 2024

K.T.J.Prakash

. . . Petitioner

Versus

1. S.T.Rajan
2. S.T.Balachander
3. Vijayakumar

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to direct to number the obstruction petition in S.R.No.TNCH090112172023 in E.P.No.32 of 2024 and adjudicate the same.

For petitioner : Mr.B.Nedunzhelian



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ORDER

Challenging the return of the application filed under Order XXI Rule 97 by the revision petitioner, the present Civil Revision Petition has been filed.

2. The petitioner has filed an application under Order 21 Rule 97 obstructing delivery as against the Order passed in RCOP.No.1343 of 2016 on the file of the XVI Small Causes Court, Chennai. It is the case of the petitioner that the property originally belonged to the father of the petitioner and the same was declared in O.S.No.9743 of 1977. Later the petitioner has also filed a suit in C.S.No.282 of 2007 against one K.Kadambari, K.Pankajavalli and K.Saravanabavan for declaration. The said suit has been decreed on 23.07.2010. In the meanwhile, the respondents 1 and 2 have created settlement deed dated 25.04.2005 and they had filed RCOP.Nos.1342 and 1343 of 2016 have been filed without the knowledge of the petitioner. The petitioner is in possession of the property. The petitioner came to know about the proceedings on 27.09.2024 when the



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bailiff came to the property. Hence, he has filed an application under Order XXI and Rule 97 of Code of Civil Procedure. The said application has been returned by the Rent Controller. Hence, the present Civil Revision Petition.

3. At the outset, this Court is of the view that impugned Order passed by the Rent Controller returning the application filed by the Rent Controller cannot be sustained in the eye of law. When the petitioner asserts independent right over the property and filed an application under Order XXI Rule 97 of Code of the Civil Procedure, the same ought to have been taken on file and decided on its own merits. Hence, once an application has been filed and obstruction has been made by persons claiming independent right over the subject property, it is the duty of the executing Court to determine all the questions in the Execution Petition itself and not by a separate suit. In such view of the matter, the impugned Order is liable to be set aside.

4. Accordingly, this Civil Revision Petition is allowed and the Order



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passed in obstruction petition in S.R.No.TNCH090112172023 in E.P.No.32 of 2024 is set aside and the Execution Court is directed to number the application filed by the revision petitioner and decide the issue as per Rule set out under Order XXI Rule 99 and 100 of Code of Civil Procedure and dispose the same. No costs. Consequently, connected miscellaneous petition is closed.

20.11.2024

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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N. SATHISH KUMAR, J.

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