



C.R.P. Nos.4182 and 4183 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2024

Pronounced on: 28.10.2024

CORAM:

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.Nos.4182 and 4183 of 2022

and C.M.P. No.21889 of 2022

1. P. Ayyam Perumal S/o. Ponnusamy
2. P. Raja S/o. Paramasivam
3. M. Ameen W/o. Mohamed Hussain ...Petitioners / Third Party
[Petitioners Common in both C.R.Ps.]
Vs.
1. J. Vanitha W/o. Late D. Jayaraman 1st Respondent / Decree
holder / Plaintiff

2.The Commissioner,
The Corporation of Chennai,
Rippon Buildings, Chennai-600 003. 2nd Respondent / Judgment Debtor /
1st Defendant.
[Respondents common in both C.R.Ps.]

COMMON PRAYER in C.R.P. Nos.4182 and 4183 of 2022: Civil

Revision Petitions are filed under section 227 of the Constitution of India, to set aside the fair and decretal order dated 03.11.2022 passed in E.A. S.R. No.49620 of 2022 and E.A. S.R. No.49619 of 2022 in E.P. No.1224 of 2016 in O.S. No.1609 of 1996 on the file of the X Assistant City Civil Court, Chennai.



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For Petitioners : Mr. N. Nithianandan
[both C.R.P.s]

For Respondents : Mr. A.R. Nixon [for R1]
[both C.R.P.s] Mr Raman Laal, Senior Counsel
for M/s. P.T. Ramadevi [for R2]

COMMON ORDER

These Civil Revision Petitions have been preferred as against the common order dated 03.11.2022 passed in E.A. S.R. No.49620 of 2022 and E.A. S.R. No.49619 of 2022 in E.P. No.1224 of 2016 in O.S. No.1609 of 1996 on the file of the X Assistant City Civil Court, Chennai .

2. These petitioners are third parties to the Suit and they filed a petition in E.A. SR No.49620 of 2022 under Order XXI Rule 97 of Code of Civil Procedure to adjudicate the petitioners' objection and obstruction to the claim of delivery of possession of the Road portion claimed by the decree holder in the execution petition and uphold the petitioners and the other general public right to enjoy and use the existing road belonging to the Corporation of Chennai. Another petition was filed in E.A. S.R. No.49620 of 2022 under Order XXI Rule 97 read with Order XXVI Rule 12 and Section 151 of Code of Civil Procedure to appoint an Advocate Commissioner to identify the Suit property with the assistance of a Head Surveyor attached to the Ayanavaram Taluk Office to identify the Suit property as described in the decree in O.S.



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No.1609 of 1996 and the EP Schedule and to file a report locating the Suit property. The execution Court without numbering the petitions rejected the petitions through a detailed common order. Against which, the present civil revision petitions have been preferred by the petitioners.

3. The learned counsel appearing for the petitioners would contend that these petitioners have filed a petition before the execution Court under Order XXI Rule 97 of Code of Civil Procedure to adjudicate the petitioners' objection and obstruction and also filed an application under Order XXI Rule 97 read with Order XXVI Rule 12 and Section 151 of Code of Civil Procedure to appoint an Advocate Commissioner to identify the Suit property. The execution Court without numbering the same, rejected the petitions by referring the merits of the case. The execution Court without hearing the parties, passed a detailed order as if the parties argued the case on merits. Therefore, the order passed by the execution Court is illegal and is liable to be set aside. The 2nd respondent / Chennai Corporation is admittedly in possession of the schedule property and still maintaining the Suit property as Road. The said Suit property is classified as Sarkar Poramboke as per the revenue records. The 1st respondent filed the Suit without necessary parties that is the adjacent land owners who are having common rights and interests



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over the Suit property and the general public who are enjoying this as Road for several decades. The petitioners and their predecessors in title were the purchasers of their respective properties prior to the 1st respondent and her predecessors in title. The Suit property has also been mentioned as 'Road' in the sale deeds of the petitioners. Also the 1st respondent deliberately suppressed the measurements of East to West side in her schedule of property mentioned in E.P. No.1622 of 2016 and the Tahsildar report dated 10.03.2022 also confirms the same. The Schedule of the suit property is not as the same as mentioned in the Plaint, decree, execution petition, title deed and the Tahsildar report. Therefore, they filed petitions under Order XXI Rule 97 of Code of Civil Procedure to adjudicate the petitioners' objection and obstruction and also filed an application under Order XXI Rule 97 read with Order XXVI Rule 12 and Section 151 of Code of Civil Procedure to appoint an Advocate Commissioner to identify the Suit property. But the Court below has erroneously rejected the petitions without even numbering the petitions and hearing the parties. Moreover, the disputed property is a Road and the decree holder obtained degree by playing fraud and suppressing the material facts, thereby, they filed the above said application, but without even numbering the petitions, the Court below rejected the petitions. Therefore, the orders passed by the Court below are liable to be set aside and the matter has



to be decided on merits.

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4. The learned counsel appearing for the 1st respondent would contend that already the 1st respondent has filed a Suit in the year 1996 itself and got decree in her favour and there is no any suppression of facts and the title of the property has to be decided by the competent Court and now the petitioners have, only to drag on the proceedings, filed these petitions. Already this Court, directed to deliver the property to the 1st respondent and thereby, the trial Court has correctly passed a detailed order and therefore, the orders passed by the trial Court is in order and the same is liable to be confirmed and the present revision petitions are liable to be dismissed.

5. The learned Senior Counsel appearing for the 2nd respondent would also supported the case of the petitioner by stating that the above mentioned disputed property belongs to the Government and is used as 'Road'. Suppressing the said fact, the 1st respondent obtained the decree and also filed execution petition for delivery of the property and the Executing Court without considering the merits of the case and without even numbering the petitions, rejected the petitions. Therefore, he also prayed to allow the petitions.



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

7. On perusal of records, it is observed that the 1st respondent has filed a Suit in O.S. No.1609 of 1996 on the file of XI Assistant City Civil Court, Chennai and the same was decreed on 29.11.2002 and thereafter, he filed an execution petition in E.P. No.1224 of 2016. In that execution petition, delivery was ordered. While pending execution petition, these petitioners have filed petitions under Order XXI Rule 97 of Code of Civil Procedure to adjudicate the petitioners' objection and obstruction and also filed an application under Order XXI Rule 97 read with Order XXVI Rule 12 and Section 151 of Code of Civil Procedure to appoint an Advocate Commissioner to identify the Suit property. The Execution Court without numbering the said applications, rejected through a common order dated 03.11.2022. The Execution Court passed an elaborate order on merits.

8. When the Court below inclined to pass a detailed order, it is the duty of the Court to hear both parties after numbering the application. In the case on hand, the Court below has not even numbered the petitions and without giving opportunity to both the parties, rejected the case after going into the



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merits of the case. Once the Court decided to go into the merits of the case, it is the duty of the Court to give opportunity to both the parties, to hear and to dispose it on merits. If the Court is inclined to reject the application on other technical grounds, no need to go into the merits of the case and if the Court is inclined to touch the merits of the case, it is the duty cast upon the Court to hear the parties. In the case on hand, without hearing the parties, the Court below has passed an elaborate order on merits. Therefore, without going into the merits of the case, this Court is inclined to set aside the order passed by the Court below and remit the case back to the Court below to dispose the case on merits after numbering and affording opportunity to both the parties.

9. In the result, these Civil Revision Petitions are allowed and the common fair and decretal order dated 03.11.2022 passed in E.A. S.R. No.49620 of 2022 and E.A. S.R. No.49619 of 2022 in E.P. No.1224 of 2016 in O.S. No.1609 of 1996 on the file of the X Assistant City Civil Court, Chennai is set aside and the matters are remitted back to the Court below for fresh consideration after numbering the applications and giving opportunity to both the parties to dispose of the case on merits in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.



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Index : Yes/No
Speaking order/non-speaking order
mjs

To

1. X Assistant City Civil Court, Chennai.
2. The Commissioner,
The Corporation of Chennai,
Rippon Buildings, Chennai-600 003.

P.DHANABAL, J.,
mjs



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