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C.R.P.No.40 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.40 of 2024

and

C.M.P.No.160 of 2024

P.Dhanasekaran

... Petitioner

Vs.

V.S.Sharma @ Swarnakaleswara Sharma (died)

Meenatchi Ammal (Died)

J.Rajeswari (Died)

1.S.Chandrasekaran

2.V.Bavani

Savithiri Nagarajan (Died)

3.Radhakrishnan

4.S.Ravichandran

5.Uma

6.Shanthi (Died)

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 12.10.2023 made in E.A.No.295 of 2022 in E.P.No.315 of 2005 in O.S.No.114 of 2004 on the file of Principal District Munsif, Villupuram.



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For Petitioner : M/s.C.Prabakaran

For Respondents : M/s.N.Suresh

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner under Section 47 of Code of Civil Procedure to cancel the order dated 13.10.2022 passed by the Court below for delivery of the EP mentioned property and to implead the legal representatives of deceased decree holders 2, 3, 6 and 10.

2. It is the case of the petitioner that respondents herein obtained a decree for declaration of title and recovery of possession. The respondents filed E.P.No.315 of 2005 and the same is pending on the file of learned Principal District Munsif, Villupuram. It is stated by the learned counsel for the petitioner that respondents 2, 3, 6 and 10 were dead while execution petition was pending and other respondents who are alive have not taken any steps to bring on record the legal representatives of deceased respondents and



therefore, the order for delivery of the property passed by the Court below is liable to be set aside with direction to the living respondents to implead the legal representatives of deceased respondents.

3. It is settled law that a co-owner is entitled to maintain an action for recovery of possession against third party not only for himself but also on behalf of other co-owners. In the case on hand, the respondents herein are joint decree holders. The order for delivery of the property passed by the Court below is not only for the benefit of the living respondents, but also for the benefit of the estate of the deceased respondents. When the legal representatives of deceased respondents are not willing to come before the Court and implead themselves in execution petition, the judgment debtor cannot take advantage of the same and deny the fruits of the decree to living decree holders. Even if delivery is effected in favour of living respondent, the same is for benefit of living respondents as well as estate of deceased. Therefore, the Court below rightly appreciated the principles of law and dismissed the petition filed by the revision petitioner. I do not find any illegality or irregularity in the order passed by the Court below.



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4. Accordingly, this Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

24.01.2024

Index : Yes / No

Internet : Yes / No

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To

The learned Principal District Munsif, Villupuram.



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S.SOUNTHAR , J.

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