



C.R.P.(NPD).No.4772 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.4772 of 2023
and C.M.P.No.28325 of 2023

D.Raja

... Petitioner

VS

1.Indirani

2.Vijayanand

3.Dhanalakshmi

4.Eswaran

Ravi (died)

5.Rani

6.Gomathi

7.Gokila

8.Anand

9.Susheela

10.Nikil

11.Nithin

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12.G.Latha

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, 1908, to set aside the Fair and Decreetal order dated 07.11.2023 made in E.A.No.32 of 2018 in E.P.No.20 of 2018 in O.S.No.197 of 2017 on the file of II Additional District and Sessions Judge, Tiruppur.

For Petitioner : Mr.N.Anand

For R1 to R11 : Mr.K.Karthikeyan

For R12 : Mr.S.Kasirajan

ORDER

This Civil Revision Petition arises against the order of the learned II Additional District and Sessions Judge, Tiruppur in E.A.No.32 of 2018 in E.P.No.20 of 2018, dated 07.11.2023.

2. The application in E.A.No.32 of 2018 was filed by third parties seeking to obstruct the decree that had been obtained by the civil revision petitioner against one G.Latha, who is the 12th respondent in the revision. O.S.No.197 of 2017 is a suit for specific performance of an Agreement of Sale dated 05.05.2014. In terms of the agreement, the plaintiff/civil revision petitioner alleged that he attempted to convert the Sale Agreement into a Sale



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Deed but the 12th respondent herein resisted the same and therefore, he was constrained to present a suit in O.S.No.197 of 2017.

3. On service of the summons, the defendant therein remained exparte, which resulted in an exparte decree being granted on 31.01.2018. Subsequently, an execution petition was filed by the Decree Holder in E.P.No.20 of 2018. This execution petition was for execution of the sale deed through the process of the Court and for delivery of possession. In this proceedings, the respondents 1 to 11 herein filed an application in E.A.No.32 of 2018 under Order 21 Rule 97 of the Code of Civil Procedure, claiming that they are the actual owners of the property and the decree in O.S.No.197 of 2017 is one which has come into being on account of the collusion between the parties to the suit. The obstruction petition came to be allowed, against which, the present revision.

4. At the outset, I have to note that an obstruction petition on being allowed, whether it is right or wrong, is a decree in terms of Order 21 Rule 103 of the Code of Civil Procedure. Therefore, the appropriate remedy for the



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civil revision petitioner is to prefer an appeal before this Court. Nevertheless, in view of the opinion that I have taking, I am not inclined to non-suit the civil revision petitioner on this ground.

5. The narration of the aforesaid facts would go to show that it is the intention of the respondents 1 to 11 to demonstrate before the Court that they are the actual owners of the suit schedule mentioned property and that the 12th defendant does not have any alienable right in the same. Therefore, they moved an application under Order 21 Rule 97 of the Code of Civil Procedure.

6. In terms of Order 21 Rule 97, an application for obstruction can be moved only by two category of persons namely the Holder of a Decree or the Court Auction Purchaser. The holder of a decree in case, he is obstructed while he is proceeding under an execution petition under Order 21 Rule 35, or when the court auction purchaser, when he attempts to take possession of the property in terms of Order 21 Rule 95 of CPC, is obstructed or resisted, he or she may move an application within 30 days from the date of such obstruction under Order 21 Rule 97 of CPC. This is clear by virtue of Article



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129 of the Limitation Act, 1963, which fixes an outer limit of 30 days to file a removal of obstruction petition. The period commences from the date of obstruction. In case the obstruction petition is not filed within 30 days, it is always open to the decree holder or a court auction purchaser to seek for reissue of warrant and if he/she is obstructed again, that gives a fresh cause of action to file a removal of obstruction petition.

7. The above discussion is to come to the conclusion that a third party cannot file an application under Order 21 Rule 97. As stated above, it can be filed only by the decree holder or the Court auction purchaser. The respondents 1 to 11, not falling under either category, are not entitled to maintain E.A.No.32 of 2018. Consequently, without going into the merits of the case, E.A.No.32 of 2018 is dismissed on the ground of maintainability. This line of reasoning is supported by the view taken by this Court in ***Donna Rossi Kitchen Line v. D.Harikrishnan and others*** reported in **2014 (2) CTC 690**.



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8. Mere allowing of the revision, does not conclude the litigation involved. The decree is of the year 2018 and therefore, it is well within the period of 12 years. Therefore, the Decree Holder shall take notice of the obstruction made by the respondents 1 to 11 herein and file a petition for re-issuance of warrant and when being obstructed by the present respondents, he shall within 30 days from the date of such obstruction move a petition for removal of obstruction.

9. The contentions of the petitioner as well as respondents 1 to 12 herein are left open. On filing such obstruction petition, it shall be tried as a suit and disposed of after giving equal opportunity to both sides. I make it clear that the obstruction petition having been filed by the respondents 1 to 11, the decree holder is not entitled to take possession of the property unless and until he obtains an order in application filed by him under Order 21 Rule 97 of the Code of Civil Procedure. I am dismissing the petition not on merits as stated above but only on the ground of maintainability.



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10. With the above observations, the Civil Revision Petition is allowed.

The fair and decreetal order passed by the II Additional District and Sessions Judge, Tiruppur in E.A.No.32 of 2018 in E.P.No.20 of 2018, dated 07.11.2023 is set aside.

11. In the light of the order passed in this revision dismissing the petition filed for obstruction, the execution petition in E.P.No.20 of 2018 stands restored on to the file of II Additional District and Sessions Court at Tiruppur, who shall issue a warrant of delivery and the amin shall note the obstruction that has been caused by the respondents 1 to 11 herein. In no case, can the amin deliver the possession of the property to the decree holder as the obstructors are already before this Court. There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The II Additional District and Sessions Judge, Tiruppur.

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V.LAKSHMINARAYANAN, J.

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