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CRP.No.5087 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.5087 of 2024
and C.M.P.Nos.28505 & 28508 of 2024

Armstrong @ Raja

.. Petitioner

Versus

Jameela Begum (Deceased)

1.G.Vajiha Sultana

LS Salahuddin (Deceased)

2.Mohammed Nizam

3.Mohammed Niyazuddin

4.Nafeesa Begum

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order passed in E.P.No.861/2024 in O.S.No.4772 of 2022 dated 23.10.2024 issuing Delivery warrant by the IX Assistant City Civil Court.

For Petitioner : Mr.B.Ravi

ORDER

Challenge has been made by the tenant in the revision petitioner, wherein, leave was granted by this Court vide Order dated 29.11.2024.



CRP.No.5087 of 2024

WEB COPY

2. O.S.No.4772 of 2021 was originally filed for partition and the suit was decreed allotting 2/5th share in the suit schedule property to the plaintiff. In the suit, it is the specific case of the plaintiff that the 11th defendant namely revision petitioner is a tenant and paying a monthly rent of Rs.8000/- and also paid an advance of Rs.1 lakh. The suit has been decreed and final order is passed. Now, it appears that Execution Petition has been filed to execute the final decree, wherein, an application has been taken out to record delivery under Order XXI Rule 35 of CPC. It is to be noted that the the revision petitioner is not made as a party. By the impugned order, Execution Petition is allowed. Challenging the said order, the present revision has been filed by getting leave of this Court.

3. Since the plaintiff had admitted the relationship of the revision petitioner as a tenant and had filed EP without making the tenant as a party and the only question of law involved, notice to the respondents is dispensed with.

4. Heard the learned counsel for the petitioner and perused the materials placed on record.



CRP.No.5087 of 2024

WEB COPY

5. It is well settled that when a party to suit is not made as a party in the execution petition, the order passed in the execution petition is not binding. As far as recording delivery, where a decree is for the delivery of any immovable property is in the occupancy of tenant, he is not bound by the decree of partition, delivery shall be effected only by way of symbolic possession. The order of delivery has to be made by affixing a copy of warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree in regard to the property as per Order 21 Rule 36 of CPC.

6. The above provisions makes it very clear that physical delivery cannot be permitted particularly when the tenant's right has been been admitted by the plaintiff herself. Therefore, while executing the final decree proceedings, as far as the portion in occupation of the tenant is concerned, Executing Court can record the symbolic possession and not physical possession.



WEB COPY



CRP.No.5087 of 2024

N.SATHISH KUMAR, J.,

7. With the above observations, this revision stands disposed of. No costs. Consequently, connected miscellaneous petitions stand closed.

09.12.2024

dhk

Index : Yes/No

Internet : Yes/No

To

The IX Judge

Assistant City Civil Court, Chennai

C.R.P.No.5087 of 2024