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O.S.A. No.253 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

O.S.A.No.253 of 2023
and
C.M.P.No.29575 of 2023

Shantilal Kothari

... Appellant

Vs.

Shatrasala Sharath Babu
72/110, Pondy Bazaar,
Chennai – 600 017.

... Respondent

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, to set aside the order passed in Application No.6778 of 2023 in E.P.No.511 of 2008 dated 20.12.2023 on the file of this Court.

For Appellant : Mr.K.V.Babu,
for Mr.G.Muthukumar

For Respondent : Mr.G.Rajagopal, Senior Counsel,
for Mr.Goutham Ganesh



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J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The order challenged in this appeal is the order dismissing A.No.6778 of 2023 in E.P.No.511 of 2008 seeking extension of time to handover possession of the property.

2. The learned Single Judge noticed the fact that the order of eviction have become final and the Special Leave Petition filed against the orders of eviction in SLP.Nos.9300 and 9301 of 2020 have been dismissed. In such view of the matter, the learned Single Judge dismissed the application.

3. Pending appeal the appellant has vacated the premises and handed-over the keys to this Court on 31.01.2024.

4. We have heard Mr.K.V.Babu, learned counsel appearing for Mr.G.Muthukumar, learned counsel appearing for the appellant Mr.G.Rajagopal, learned Senior Counsel appearing for the respondent.

5. Mr.K.V.Babu, learned counsel appearing for Mr.G.Muthukumar, learned counsel appearing for the appellant would however contend that



since a third party has filed a petition to revoke the probate granted in favour of the respondent in this appeal, this court may retain the keys till such time the revocation application is decided.

6. We do not think that we can do that at the instance of the appellant. As of today there is probate granted in favour of the respondent and the respondent is the legal owner of the property. Therefore, the respondent is entitled to possession of the property. The keys are directed to be handed over to Mr.Goutham Ganesh, learned counsel appearing for the respondent. If probate is revoked it is open for the appellant to seek whatever remedy that may be available to him under law.

7. Accordingly, this Original Side Appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

dsa
Index : No
Internet : Yes
Neutral Citation : No
Speaking order

(R.S.M., J.) (R.S.V., J.)
21.03.2024

R.SUBRAMANIAN, J.
and



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R.SAKTHIVEL, J.

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