



C.R.P.(NPD).Nos.1114 and 1116 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).Nos.1114 and 1116 of 2020

Mohan

... Petitioner (in both CRPs)

VS

D.Sundaraj

... Respondent (in both CRPs)

Prayer in C.R.P.(NPD).No.1114 of 2020: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the Fair and Decretal order dated 12.07.2016 in E.A.No.24 of 2013 in E.P.No.46 of 2011 in O.S.No.50 of 2011 on the file of the learned Subordinate Judge, Vaniyambadi, Vellore District, by allowing the C.R.P.

Prayer in C.R.P.(NPD).No.1116 of 2020: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to set aside the order dated 12.07.2016 in E.P.No.46 of 2011 in O.S.No.50 of 2011 on the file of the learned Subordinate Judge, Vaniyambadi, Vellore District, by allowing the C.R.P.



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For Petitioner : Mr.G.B.Rajesh
for Mr.S.L.Sundarasanam
(in both CRPs)

For Respondent : No Appearance
(in both CRPs)

COMMON ORDER

These two Civil Revision Petitions are filed challenging the order passed by the Executing Court terminating execution petition filed by the petitioner in E.P.No.46 of 2011 and dismissing the application for delivery of the suit property filed in E.A.No.24 of 2013 in E.P.No.46 of 2011.

2. The petitioner herein filed a suit for specific performance against the respondent and obtained a decree. The said decree was put into execution in E.P.No.46 of 2011. The Sale Deed was executed in pursuance of the decree passed by the Court below in favour of the petitioner. Thereafter, the petitioner filed E.A.No.24 of 2013 seeking delivery of the property covered by the said Sale Deed. At this stage, one Gnanasoundary filed E.A.No.44 of 2014 under Order 21 Rule 97 of the Civil Procedure Code to declare the



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decree obtained by the petitioner in O.S.No.50 of 2011 was null and void and hence, the petitioner could not proceed with execution petition for delivery of the property. The said application filed by Gnanasoundary was allowed and aggrieved by the same, the petitioner said to have filed an appeal before the Regular Appellate Court.

3. In view of the allowing of Order 21 Rule 97 petition filed by the third party, the Trial Court dismissed the application filed by the petitioner for delivery of the property in E.A.No.24 of 2013 and terminated the main execution petition in E.P.No.46 of 2011. Aggrieved by the said order dismissing application in E.A.No.24 of 2013 and terminating E.P.No.46 of 2011, the petitioner is before this Court.

4. The orders impugned in these revisions are only consequential to the order passed in Order 21 Rule 97 petition filed by a third party. Unless the order allowing the said application is set aside in the regular appeal, the petitioner is not entitled to proceed with execution proceeding and seek delivery of the property. Therefore, this Court is inclined to grant liberty to



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the petitioner to revive E.P.No.46 of 2011 and E.A.No.24 of 2013, in case the appeal filed by the petitioner challenging the allowing of the Order 21 Rule 97 petition filed by one Gnanasoundary is allowed.

5. With this clarification, both Civil Revision Petitions are disposed of.

No costs.

05.03.2024

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



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To

WEB C
The Subordinate Judge,
Vaniyambadi, Vellore District.



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S.SOUNTHAR, J.

dm

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