



CRP(MD).No. 142 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2024

CORAM :

THE HON'BLE MR JUSTICE G.ILANGO VAN

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Vallikannu

... Petitioner

Vs.

Pandi

... Respondent

PRAYER:- Petition filed under Section 115 CPC against the fair and decretal order, dated 26.07.2022 passed in E.P.No.9 of 2021 in O.S.No.48 of 2008 on the the file of the District Munsif, Devakottai.

For Petitioner : Mr.V.R.Shanmuganathan

For respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order, dated 26.07.2022 passed in E.P.No.9 of 2021 in O.S.No.48 of 2008 on the the file of the District Munsif, Devakottai.

2. The suit in O.S.No.48 of 2008 was filed by the revision



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petitioner herein against the Judgment Debtor viz., Pandi, seeking the relief of declaration and recovery of possession. After hearing, the suit was decreed in favour of the plaintiff declaring the title of the property in his favour and the recovery of possession was ordered directing the Judgment Debtor to hand over the possession to the revision petitioner within a period of two months. Against which, no appeal was preferred by any one. Before the trial Court, the Judgment Debtor has contended that the property belongs to his wife and not to his mother. After the evidence, the trial Court has recorded a findings that the property belongs to the plaintiff and not to the wife of the Judgment Debtor. Again, the very same ground was raised by the Judgment Debtor before the Executing Court. That was accepted by the Executing Court and dismissed the Execution Petition.

3. Further, the Executing Court has dismissed the petition stating that earlier Execution Petition filed by the petitioner was dismissed for default on 10.01.2018 and the same was suppressed by him in the new petition which may not be taken as a *bonafide* one. It is further contended that any number of execution petition can be filed by the decree holder. But, it must be mentioned in the concerned Column in the Execution



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Petition.

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

5. When the same plea was raised by the Judgment Debtor at the time of hearing the suit was rejected, it cannot be raised during the time of execution proceedings. Further, the Executing Court cannot go beyond the finding of the trial Court. It is the duty of the Executing Court to execute the decree as it stands. So, on that account, the order passed by the Executing Court is set aside and accordingly, this Civil Revision Petition is allowed. The Executing Court is directed to proceed with the matter in accordance with law. No costs.

07.03.2024

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order
trp

To

The District Munsif, Devakottai.



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G.ILANGOVA,N,J.

Trp

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