



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.409 of 2021 and
C.M.P.(MD)Nos.2238 and 2240 of 2021

J.Ganesan

... Petitioner

-VS.-

1.S.Murshitha Parvin
2.B.Reka Vajira
3.M.Murugan
M.Ammathai (Died)
4.S.Sannasi

5.The Tahsildar,
Bodinaickanur Taluk, Theni District.

6.Rajendran
7.Ochammal
8.Jothi @ Pothumani

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records relating to the impugned petition and order dated 03.02.2021 made in Unnumbered E.A.No. of 2021 in E.P.No.15 of 2018 in O.S.No.140 of 2014 on the file of the District Munsif Court, Bodinaickanur and to set aside the same.



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For Petitioner	:Mr.M.K.Jeyamohan
For R1 and R2	:Mr.M.Mohamed Ibrahim Saibu
For R5	:Mr.K.S.Selvaganesan
	Additional Government Pleader
For R3, R4, R6 to R8	:No Appearance

ORDER

This Revision Petition has been filed challenging the impugned order passed in Unnumbered E.A. of 2021 in E.P.No.15 of 2018 in O.S.No.140 of 2014 on the file of the District Munsif Court, Bodinaickanur, dated 03.02.2021.

2.The respondents 1 and 2 are the plaintiffs in the suit in O.S.No.140 of 2014 on the file of the District Munsif Court, Bodinaickanur. In the suit, an *ex parte* judgment was passed and the Revision Petitioner had filed an application to set aside the *ex parte* order on 22.01.2021. However, the same was dismissed by order, dated 07.01.2022. The Revision Petitioner further contended that an execution petition was filed by the plaintiffs before the Executing Court and according to the Revision Petitioners, no notice was served on them and thereafter, the Revision Petitioners have filed an



application in E.A.No. of 2021, which was unnumbered and returned. Challenging the same, the present Revision Petition has been filed by the fourth defendant in the suit.

3.The Revision Petitioner contended that when an application was filed challenging the execution proceedings on the ground of non service of summons in the execution proceedings, the present application is filed, however, the Executing Court has returned the said application without even assigning the number, which is not in accordance with law. The learned Counsel relied upon a judgment of this Court reported in **2021 SCC OnLine Mad 2514** between Selvaraj vs Koodankulam Nuclear Power Plant India Limited, wherein, this Court had held that unnumbered application has to be numbered and heard.

4.*Per contra*, the learned Counsel for the respondents 1 and 2/plaintiffs contended that when an application in I.A.No.1 of 2021 in O.S.No.140 of 2014, was filed by the Revision Petitioner to condone the delay, the trial Court has recorded that an *ex parte* order was passed on 13.07.2018 and the



defendants have received the order on 29.11.2018, which was marked as Ex-B1 and apart from that, the summons in execution petition in E.P.No.15 of 2018 was served on the Revision Petitioner and since the Revision Petitioner was not present, he was remained *ex parte* and an order passed on 14.12.2018 and thereafter, on 20.06.2019, the possession was handed over to the respondent/plaintiff. Hence, the learned Counsel for the respondents 1 and 2 submitted by taking into consideration these facts, the application filed by the petitioner was returned, which needs no interference of this Court. The learned Counsel for the respondents 1 and 2 contended that when the execution petition was effected and possession was handed over to the plaintiff, nothing survives in the Revision Petition.

5.It is not in dispute that the Revision Petitioner, who is the fourth defendant in the suit had remained *ex parte* before the suit and thereafter, no application was filed to set aside *ex parte* order and as per the findings of the Executing Court, an application was filed by the Revision Petitioner to set aside the *ex parte* order. However, the said application was came to be rejected on the ground that though the Revision Petitioner had knowledge of service of



summons, had not made any application immediately and after handing over of possession was effected in Execution Petition, on 22.01.2021, the Revision Petitioner had filed the present application challenging the *ex parte* order, dated 14.12.2018 made in E.P.No.15 of 2018 in O.S.No.140 of 2014 on the file of the District Munsif Court, Bodinaickanur. Admittedly, when the decree was executed in favour of the plaintiffs/respondent 1 and 2, nothing survives in the Revision and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10.12.2024

Internet :Yes/No
NCC :Yes/No
Index :Yes/No

cmr

To

The District Munsif, Bodinaickanur.



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N.SENTHILKUMAR, J.

cmr

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