



C.R.P(MD)No.760 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 11.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.760 of 2024

and

C.M.P(MD)No.4139 of 2024

Banumathi

... Revision Petitioner / Petitioner

Vs

The Managing Trustee,
Shri Sundararaja Perumal Devasthanam,
Paramakudi Town,
Ramanathapuram District.

... Respondent / Respondent

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to allow this revision petition, set aside the fair order and decreetal order dated 08.12.2023 in E.A.No.1 of 2023 in E.A.No.6 of 2022 in E.P.No.10 of 2020 in O.S.No.29 of 1996 of the District Munsif Court, Paramakudi and allow the same.

For Petitioner : Mr.V.Meenakshi Sundaram

For Respondent : Mr.S.Srinivasa Ragavan



WEB COPY



C.R.P(MD)No.760 of 2024

ORDER

This Civil Revision Petition is filed to allow this revision petition, set aside the fair order and decreetal order dated 08.12.2023 in E.A.No.1 of 2023 in E.A.No.6 of 2022 in E.P.No.10 of 2020 in O.S.No.29 of 1996 of the District Munsif Court, Paramakudi and allow the same.

2. The facts in brief is that the suit in O.S.No.29 of 1996 was decreed as prayed for with cost and the judgment debtor was directed to remove the superstructure and handover the vacant possession to the decree holder. Against the judgment and decree of the trial Court, A.S.No.71 of 2000 was preferred before the appellate Court. The appeal came to be dismissed. Against which Second Appeal in S.A(MD)No.417 of 2018 was preferred before this Court which was also came to be dismissed by order dated 20.01.2020. Delivery was ordered and at that time, this Revision Petitioner claiming himself to be an obstructor filed a petition under Order XXVI, Rule 6 under Section 151 of C.P.C., to appoint an advocate commissioner to inspect the property, stating that she purchased the property through unregistered sale deed dated



C.R.P(MD)No.760 of 2024

11.07.1991 and after purchase, constructed a tiled house. For that purpose only, she filed the obstruction petition. Whether tiled house is available in the property or not must be ascertained. For that purpose commissioner petition is filed.

3. That was resisted by the respondent stating that, the unregistered sale deed itself was not admitted by the execution Court in E.A.No.18 of 2022. So the petition itself is not maintainable. After hearing both sides, that came to be dismissed by the execution Court. Against which this Civil Revision Petition is preferred.

4. At that time of argument, learned counsel for the revision petitioner has drawn the attention of this Court to the Commissioner's report filed in the suit. Wherein it is mentioned that at the time of inspection it was represented to him that the hut referred as '2' in the sketch belongs to the second defendant in the suit called Veerammal and the hut shown as '10' belonging to one Sathish who is the third party to the suit. On the East of hut No.10, there is a vacant site, where some remnants of a burnt out huts were found. Later, a new hut was put up.



C.R.P(MD)No.760 of 2024

This is according to the revision petitioner belongs to her. So it must be ascertained.

5. No doubt that the attempt made by the revision petitioner to mark the unregistered sale deed did not succeed. On the basis of the unregistered sale deed, the revision petitioner cannot claim any right or title over the property. Whether she is in possession or not, is a point to be considered by the execution Court and if the possession is not traceable to title, then as mentioned by the respondent herein, her obstruction got to be removed. So appointment of commissioner will benefit both.

6. On the sole ground, I am of the view that the order passed by the learned District Munsif, Paramakudi dated 08.12.2023 in E.A.No.1 of 2023 in E.A.No.6 of 2022 in E.P.No.10 of 2020 in O.S.No.29 of 1996, is liable to be set aside. Accordingly, it is set aside, ofcourse for the delay caused in prosecuting the matter must be compensated. Therefore, the revision petitioner is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the decree holder within a period of 15 days from the



C.R.P(MD)No.760 of 2024

date of receipt of a copy of this order. On payment of cost, the execution Court namely the learned District Munsif, Paramakudi, is directed to restore E.A.No.1 of 2023 to its file and appoint a commissioner to execute the above said work. The remuneration for the Advocate Commissioner may be fixed at the discretion of the execution Court. It is made clear that the Advocate Commissioner must be appointed only for looking or finding out whether any hut is available in the decreed properties and not for any other purpose.

7. With the above observation, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition stands closed.

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

11.12.2024

pnn



WEB COPY



C.R.P(MD)No.760 of 2024

G.ILANGO VAN, J.

pnn

To

- 1.The District Munsif Court, Paramakudi.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN

**C.R.P(MD)No.760 of 2024
and
C.M.P(MD)No.4139 of 2024**

11.12.2024