



C.R.P(MD)No.689 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.689 of 2019

and

C.M.P(MD)No.3830 of 2019

S.Udaiyar

... Petitioner

Vs.

1.Ponnudurai

2.Chella Shunmugavel

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in E.A.No.7 of 2019 in E.A.No.232 of 2018 in E.P.No.33 of 2015 in O.S.No.146 of 2008, dated 12.02.2019 on the file of the Principal Sub Court, Tirunelveli, by allowing this Civil Revision Petition.

For Petitioner : Mr.H.Arumugam

For Respondents : No appearance



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ORDER

The present revision petition has been filed by a third party to O.S.No.146 of 2008 on the file of the Principal Sub Court, Tiruneveli, challenging an order passed in the execution proceedings.

2. The first respondent herein as plaintiff had filed O.S.No.146 of 2008 for the relief of specific performance as against the second respondent. Pending suit, the defendant had executed a sale deed in favour of the plaintiff on 11.11.2013. Thereafter, the matter was referred to Lok Adalat. The Lok Adalat passed an award on 14.11.2013 for refund of full Court fee.

3. The plaintiff / decree holder had filed E.P.No.33 of 2015 for taking delivery of the property from the defendant in the suit. The defendant had filed a Memo indicating that he has no objection to deliver the suit schedule property. The execution petition was dismissed on 08.10.2015 on the ground that already sale deed has been executed by the judgment debtor. The decree holder had challenged the same in



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C.R.P(MD)No.2138 of 2016. This Court by an order, dated 07.03.2018 had allowed the revision and remitted the matter back to the Trial Court for fresh orders, in accordance with law.

4. When the execution proceedings were pending, the revision petitioner herein, who is the tenant of the property had filed E.A.No.232 of 2018 under Order XXI, Rule 97 of CPC., contending that he is in possession of the property and therefore, the decree holder cannot take possession of the property on the basis of a Memo filed by the judgment debtor. The said petition was filed by the revision petitioner based upon the inspection made by the Ameen, who had recorded that, a tenant is in possession of the property.

5. Pending E.A.No.232 of 2018, the revision petitioner had filed E.A.No.7 of 2019 to receive two documents, namely, the sale deeds said to have been executed by the defendant in favour of the plaintiff on 11.11.2013 and the deposition of P.W.1 in the said suit, to establish the fact that, he is in possession of the property as a tenant. The Executing



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Court had dismissed the said application on the ground that both these documents are already available in the records of the Court and therefore, this application is superfluous. Challenging the same, the present revision petition has been filed.

6. According to the learned Counsel appearing for the revision petitioner, he was examined as D.W.2 in the main suit, wherein he had categorically stated that he is the tenant of the suit schedule property. The Ameen report also reflects that he is in possession of the property as a tenant. In order to establish the said fact, these two documents are necessary.

7. Though notice was received by the decree holder, he has neither appeared in person nor through Counsel.

8. The two documents that are proposed to be marked by the revision petitioner herein are already part of the record of the Trial Court. Therefore, the application in E.A.No.7 of 2019 is superfluous and the



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Trial Court had rightly rejected the same. The entire burden is upon the revision petitioner herein, who is the petitioner in E.A.No.232 of 2018 to prove that he is the tenant of the suit schedule property, even prior to the filing of the suit. In case, if the revision petitioner is able to prove the same, the decree holder would be entitled to take only symbolic possession of the property as contemplated under Order XXI, Rule 36 of CPC.

9. With the said clarification, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

15.04.2024

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



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To

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- 1.The Principal Sub Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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