



WEB COPY

C.RP(MD)No.1702 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

C.R.P(MD)No.1702 of 2024

and

C.M.P(MD).No.9933 of 2024

Perumal

... Petitioner

Vs.

1.S.Gurunathan

2.Muthiah

3.S.Ayyappan

4.S.Krishnan

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the order and decretal order dated 19.02.2024 in E.A.No.3 of 2021 in E.P.No.23 of 2020 on the file of the Court of the Principal District Munsif, Nagercoil, Kanyakumari District, set aside the same, and allow the CRP.

For Petitioner

:Mr.S.Xavier Rajini

ORDER

This civil revision petition is directed against the order dated 19.02.2024 made in E.A.No.3 of 2021 in E.P.No.23 of 2020 on the file of the learned Principal District Munsif, Nagercoil, Kanyakumari District.



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2. The said application is filed under Section 10 of the Code of Civil Procedure. The contention of the petitioner is that though a decree has been passed in RCOP No. 9 of 2020 holding that the petitioner as a tenant and ordering his eviction, the petitioner has filed a civil suit in O.S.No. 62 of 2020. In the said suit, the petitioner has claimed title to the suit property and the suit is filed for a declaration that the plaintiff is the owner of the plaint schedule property and for further declaration that the order passed in the RCOP is collusive, fraudulent and for permanent injunction restraining the defendants from executing the RCOP decree.

3. It is the contention of the petitioner that the issues involved in the present RCOP and in the suit are one and the same and therefore, the proceedings in the RCOP should be stalled till the disposal of the said suit.

4. Mr.S.Xavier Rajini, learned counsel appearing on behalf of the petitioner would submit that the trial Court ought to have seen that the very decree in the RCOP itself is mentioned in the earlier suit and the suit is also filed in the year 2020. While the decree-holder is not cooperating for the suit to be disposed of at an early date, he is pressing the execution petition alone. If the possession is taken from the petitioner, then he will be put to



grave prejudice.

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5. I have considered the said submission made by the learned counsel for the petitioner and perused the material records of the case.

6. The petition is filed under Section 10 of the Code of Civil Procedure. I am unable to accept the contention of the petitioner as the matter directly and substantially in issue in the present execution petition and the suit in O.S.No.62 of 2020 are not one and the same. In the present execution petition, the RCOP decree is put to execution. As far as the suit is concerned, whether the RCOP decree is collusive and fraudulent, is the contention. When the petitioner has prayed for a declaration that the RCOP decree is null and void and also prayed for a permanent injunction restraining the decree-holder from enforcing the decree, it is for the petitioner to move the self same Court for any interim relief of injunction or stay, as the case may be if he wants interim protection pending disposal of the suit. Without resorting to such an exercise, the filing of the application under Section 10 of the Civil Procedure Code before the Execution Court cannot be countenanced. The Execution Court cannot overreach the decree and stay by saying that let the suit be decided.



7. In view thereof, finding no merits, the Civil Revision Petition is disposed of, however, with the liberty for the petitioner to approach the learned Additional District Judge, Kanyakumari, in O.S.No.62 of 2022 itself for such interim relief, if he is so preferring. As and when such interim application is filed, the same shall be considered as expeditiously as possible by the learned judge. No costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2024

NCC:Yes/No

Index:Yes/No

Rmk

To

1.The Principal District Munsif, Nagercoil.

2.The Additional District Judge, Kanyakumari.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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