



C.R.P.(MD).No.1626 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.1626 of 2019

and

C.M.P(MD) No.8504 of 2019

Muniyandi (died)

1. Muthammal
2. Shanmugavadivoo
3. Gomathi
4. Muthulakshmi
5. Pathirakali

... Revision Petitioners/
Petitioners/Plaintiffs

-vs-

1. Thamba Thevar

2. Parvathi Ammal

... Respondents/Respondents
Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C, against the order and dceretal order dated 28.06.2019 made in E.P.No.28 of 2018 in O.S.No.210 of 2005 on the file of the District Munsif Court, Srivaikundam.

For Petitioners : Mr.S.Siva Thilakar

For Respondents : Mr.K.P.Narayanakumar– for R2
: No appearance - R1



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C.R.P.(MD).No.1626 of 2019

ORDER

The present Civil Revision Petition has been filed by the decree holder in O.S.No.210 of 2005 on the file of the District Munsif Court, Srivaikundam. The said suit was filed for the relief of declaration of title and permanent injunction not to put up any construction. Alleging violation of the decree by the first defendant in the suit, the plaintiffs had filed E.P.No.28 of 2018 for civil arrest of the first defendant/judgment debtor.

2. As per the contention of the learned counsel appearing for the decree holders, in violation of the decree for injunction, the first defendant in the suit has encroached over the property and put up construction. The plaintiff had relied upon two legal notices namely, Ex.P1 and Ex.P2 for the said purpose. Ex.P1, is the legal notice addressed to the second defendant in the suit directing to remove the construction put up in the suit schedule property. Ex.P2, is the reply notice sent by the second defendant. In the said reply notice, second defendant has taken a stand that she had purchased a portion of the property from the first defendant and she had put up construction even prior to filing of the suit. Relying upon the contention in Ex.P2 – reply notice, the Execution Court had dismissed the execution proceedings on the ground



C.R.P.(MD).No.1626 of 2019

that the construction had been put up even prior to the filing of the suit.

3. According to the learned counsel appearing for the petitioners, the petitioners/decreed holders should have been granted an opportunity to establish the fact that the constructions were put up by the first defendant after the decree was passed by the trial Court. However, relying upon the reply notice issued by the second defendant, the execution Court ought not to have dismissed the application under Order 21 Rule 32 of C.P.C.

4. Though notice sent to the first respondent, the same was returned with an endorsement as “refused” and name also printed in the cause list, none appeared on behalf of him.

5. The learned counsel appearing for the second respondent had contended that the second respondent is not a necessary party to the execution proceedings. In view of the fact that the prayer has been sought for only as against the first defendant in the suit.



C.R.P.(MD).No.1626 of 2019

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6. Considering the above said facts, the execution Court had dismissed the petition filed under Order 21 Rule 32 of C.P.C, solely relying upon the reply notice said to have been sent by the second defendant under Ex.P2. It is an untested version of the second defendant. Therefore, the Execution Court ought not to have relied upon the second defendant and dismissed the execution proceedings. The decree holders should have been permitted to prove that the construction has been put up by the first defendant after the decree was passed.

7. In view of the above said facts, the order impugned, dated 28.06.2019 made in E.P.No.28 of 2018 in O.S.No.210 of 2005 on the file of the District Munsif Court, Srivaikundam, in the revision petition is set aside and the matter is remitted back to the file of the Execution Court. The decree holders are at liberty to let in oral and documentary evidence to establish the fact that the first defendant had put up construction, after decree was passed by the trial Court.



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C.R.P.(MD).No.1626 of 2019

8. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

10.04.2024

1/2

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

To
1. The District Munsif Court,
Srivaikundam.



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C.R.P.(MD).No.1626 of 2019

R.VIJAYAKUMAR,J.

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C.R.P.(MD)No.1626 of 2019

10.04.2024



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C.R.P.(MD).No.1626 of 2019

1/2