



C.R.P.(MD)No.2654 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.2654 of 2023

and

C.M.P.(MD)No.13832 of 2023

Radhamaniammal

... Petitioner

Vs.

Baskarapandian

... Respondent

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 26.06.2023, made in E.A.No.16 of 2021 in E.A.No.28 of 2018 in E.P.No. 31 of 2012, on the file of the 3rd Additional Sub Court, Madurai.

For Petitioner : Mr.S.Ramesh @ Ramiah

ORDER

The suit in O.S.No.680 of 2003 was filed by the plaintiff Bhaskarapandian to directing the defendant M.P.Balakrishnan to vacate and hand over the suit property and to pay Rs.1,06,105/- towards arrears of rent from 25.08.2001 to May, 2003 with interest at the rate of 12% per annum and the suit was decreed as prayed for along with costs and damages. Thereafter, the plaintiff Bhaskarapandian had preferred E.P.No.31 of 2012 to execute the decree. Also had filed E.A.No.54 of 2016 to the sell



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the schedule of property stated thereunder in the said E.A.No.54 of 2016 and the Court had granted interim attachment of the said property.

2. One P.Radhamaniammal, a third party had preferred E.A.No.28 of 2018 in E.P.No.31 of 2012 stating that her property is wrongly included in the main execution petition and prayed to dismiss the execution petition. The plaintiff Bhaskarapandian had wrongly included the said P.Radhamaniammal's property as if it belongs to the M.P.Balakrishnan. And also taking steps to sell her property to recover the amount which the said M.P.Balakrishnan is liable to pay to the said Bhaskarapandian. The said E.A.No.28 of 2018 was dismissed for default.

3. Thereafter, the said P.Radhamaniammal has preferred a restoration petition E.A.No.16 of 2021 and the same was also dismissed for default on 29.10.2021, which was during the period of Covid-19. Again, another E.A.No.7 of 2022 was filed to restore E.A.No.16 of 2021 and the same was allowed on 12.01.2023 with cost of Rs. 2,000/- payable to the plaintiff Bhaskarapandian. Based on the said order, E.A.No. 16 of 2021 was restored.

4. While hearing the restoration application in E.A.No.16 of 2021, the Trial Court has rendering the finding that earlier the said P.Radhamaniammal, 3rd party



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had allowed the cases for non-prosecution three times and hence the Trial Court declined to restore the main petition. Hence the present revision petition.

5. The contention of the revision petitioner is that the Trial Court failed to consider that the revision petitioner is a 3rd party to the main suit. The 1st item belongs to the revision petitioner, which is her self-acquired property and the property tax stands in the name of the revision petitioner, but the said property is attached by the Court in order to collect the arrears of rent from the defendant M.P.Balakrishnan. Since the said 1st item of the property belongs to revision petitioner, an opportunity ought to be granted to her to contest the case. Further each and every petition was heard on its own merits, hence the earlier petitions cannot be cited as reasons to dismiss the present petition. Therefore, this Court is inclined to set aside the impugned order and allow the revision petition and accordingly allowed.

6. However, it is seen that as on the date of filing the main restoration petition, there was no attachment of the revision petitioner's property. And the attachment was ordered in E.A.No.54 of 2016 subsequently i.e. on 16.02.2024. Therefore, the case of action to file the petition to challenge the attachment arises only from (*)16.02.2024. Therefore, this Court is of the considered opinion that the revision



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petitioner ought to be granted liberty to file appropriate petition challenging the attachment order, dated (*)**16.02.2024**. The revision petitioner is at liberty to file a fresh claim petition to raise the attachment order dated (*)**16.02.2024**.

7. Therefore, this Civil Revision Petition is disposed of with liberty to the petitioner herein to file appropriate petition to raise the attachment, if so advised. The said petition shall be filed within a period of four weeks from the date of receipt of a copy of (*)**the Corrected order**. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD II)

(*)**Corrected as per the order of this court dated 18.09.2024 made in CRP(MD).2654 of 2023.**

Sd/-

Assistant Registrar(AD II)

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Sub Assistant Registrar()

Tmg

To

To be substituted to the order which is already despatched on 11.09.2024

1. The III Additional Subordinate Judge, Madurai.



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2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.RAMESH ALIAS RAMIAH, Advocate (SR-51914[F] dated
18/09/2024)

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Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023