



C.R.P.(PD)(MD)No.2320 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P.(PD)(MD)No.2320 of 2023

and

C.M.P.(MD)No.11926 of 2023

Thiruvaadhurai Trust
Through one of its Trustee
Mariselvam

... Petitioner/Petitioner/Petitioner/
3rd Party / 3rd Party

VS.

1.Parvathi

... 1st Respondent/ 1st Respondent/
1st Respondent/Petitioner/Plaintiff

2.M.Prabhakaran

... 2nd Respondent/ 2nd Respondent/
2nd Respondent/2nd Respondent/2nd Defendant

Prayer:- Civil Revision Petitions filed under Section 115 of C.P.C., against the Fair and Decretal order dated 05.08.2023 passed in E.A.No.11 of 2023 in E.A.No.5 of 2020 in E.P.No.126 of 2013 in O.S.No. 79 of 2007 on the file of the learned Sub Court, Tirunelveli.

For Petitioner : Mr.S.Velrajan

For R1 : Mr.V.Meenakshi Sundaram

For R2 : No Appearance



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ORDER

The Civil Revision Petition is filed to set aside the Fair and Decreetal order dated 05.08.2023 passed in E.A.No.11 of 2023 in E.A.No. 5 of 2020 in E.P.No.126 of 2013 in O.S.No.79 of 2007 on the file of the learned Sub Judge, Tirunelveli.

2.In the said E.A., the petitioner herein had prayed for recalling R.W.1 for further cross examinaton. The execution petition is filed for executing the decree in O.S.No.79 of 2007, for which, the above petition in E.A.No.5 of 2020 has been filed by the petitioner Trust, who is a third party to the proceedings, claiming that the subject matter property belongs to the Trust for the purpose of conducting the 'Kattalai' and collusively the decree has been obtained between the original decree holder and the judgment debtor. The same is duly resisted by the decree holder. As a matter of fact, it can be seen that questions regarding the 'Kattalai' as well as the title has been put in the cross examination of the witness.

3.In that view of the matter, *Mr.V.Meenakshi Sundaram*, learned counsel for the first respondent would submit that when they have



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comprehensively cross examined on all aspects, the trial Court shall have the right to refuse the relief prayed for by the petitioner.

4.On consideration of the said submissions, in the over all facts and circumstances of the case, it is seen that the petitioner is a Trust and it is contending that the property is devised for the purpose of performing the 'Kattalai'. It is now stated that certain other information were also obtained regarding the same and therefore, one more opportunity is pleaded. When the case itself is by way of a claim petition, in the execution petition, there is nothing wrong in granting one more opportunity to the petitioner. However, if any questions were not asked, it was only the lapse on the part of the petitioner and therefore, for the hardship which is now caused to R.W.1, the petitioner can be put to terms. Therefore, the Civil Revision Petition is allowed on payment of cost of Rs.5,000/-. This apart in the next hearing, if R.W.1 is present, the petitioner trust shall cross examine on the same day and complete the proceedings.

5.In view thereof, the Civil Revision Petition is allowed on the following terms:



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(i) The order of the learned Sub Judge, Tirunelveli, dated 05.08.2023 in E.A.No.11 of 2023 in E.A.No.5 of 2020 in E.P.No. 126 of 2013 in O.S.No.79 of 2007 shall stand set aside and consequently, all the applications are allowed on condition that the petitioner pay a cost of Rs.5,000/- to the first respondent on or before **19.07.2024**;

(ii) The cost can be paid either to the learned counsel appearing on behalf of the first respondent herein before this Court or to the learned counsel appearing before the trial Court or to the first respondent/decreed holder herself directly and a memo to be filed before the trial Court on or before **22.07.2024**;

(iii) If such memo is filed, the Civil Revision Petition is deemed to be allowed and on the next hearing on 25.07.2024, R.W.1 shall be present and the petitioner shall cross examine her on the same day;

(iv) If the cost memo is not filed, the Civil Revision Petition shall be treated as dismissed and the trial Court shall proceed with the case further;



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(v) Since the matter arises out of a claim petition in view of the execution stage, the trial Court is requested to take up the matter for disposal, expeditiously, in any event not later than three months from the date of receipt of a copy of this order;

(vi) No costs. Consequently, connected miscellaneous petition is closed.

03.07.2024

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

The Sub Court, Tirunelveli.



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D.BHARATHA CHAKRAVARTHY, J.

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