



C.R.P(MD)Nos.1990 of 2019 & 312 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **05.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)Nos.1990 of 2019 & 312 of 2020

and

C.M.P(MD)Nos.10248 of 2019 & 1803 of 2020

Stella

... Petitioner
(In both the cases)

Vs.

1.Rosammal

2.Rasu

... Respondents
(In both the cases)

PRAYER in C.R.P(MD)No.1990 of 2019: Civil Revision Petition is filed under Section 115 of CPC., to set aside the fair and decreetal order, dated 24.09.2019 made in E.A.No.25 of 2018 in E.A.No.3 of 2017 in E.P.No.24 of 2016 in O.S.No.21 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Thiruvadanai, Ramanathapuram District and allowing this Civil Revision Petition.

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C.R.P(MD)Nos.1990 of 2019 & 312 of 2020

PRAYER in C.R.P(MD)No.312 of 2020: Civil Revision Petition is filed under Section 115 of CPC., to set aside the order and decree, dated 20.12.2019 made in E.A.No.21 of 2019 in E.A.No.3 of 2017 in E.P.No. 24 of 2016 in O.S.No.21 of 2016 on the file of the Principle District Munsif cum Judicial Magistrate, Thiruvadanai, Ramanathapuram and allow this Civil Revision Petition.

In both the cases:

For Petitioner : Mr.G.Gomathi Sankar

For R-1 : Mr.PT.S.Narendravasan

COMMON ORDER

C.R.P(MD)No.1990 of 2019 has been filed by a third party to the suit in O.S.No.21 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Thiruvadanai, Ramnathapuram District. The first respondent herein as plaintiff had filed a suit for declaration of title and recovery of possession as against the second respondent herein. The suit was decreed *ex parte* on 25.07.2016. To execute the said decree, the plaintiff had filed E.P.No.24 of 2016 for taking delivery. When the said application was pending, the revision petitioner herein, who is the wife



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of the original defendant had filed E.A.No.3 of 2017 under Order XXI, Rule 97 of CPC., contending that she is in possession of the property in her own right and making a claim over the property.

2. When the obstruction petition was pending, the revision petitioner / claim petitioner had filed E.A.No.25 of 2018 to amend the body of E.A.No.3 of 2017 and the prayer in E.A.No.3 of 2017. A perusal of the said affidavit discloses that, instead of obstructor, she wants to claim herself to be a claim petitioner and the absolute owner of the property in dispute. Both the words Obstructor under Order XXI, Rule 97 of CPC., or a claim petitioner or claim to be the absolute owner are one and the same. In view of the fact that all of them are attempting to protect the possession of the person in occupation of the property. Therefore, by allowing the said application for amendment, no prejudice would be caused to the decree holder. However, the Executing Court had proceeded to dismiss the said application on the ground that different stands have been taken by the claim petitioner.



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3. This Court is of the considered opinion that the said amendment application could be allowed. The order of the Trial Court is set aside and C.R.P(MD)No.1990 of 2019 stands allowed.

4. In C.R.P(MD)No.312 of 2020, the claim petitioner in E.A.No.3 of 2017 has also filed E.A.No.21 of 2019 to call for the original records in O.S.No.21 of 2016 to establish the fact that the original defendant was not served during trial and to prove that the decree is not legally executable. The said application has also been dismissed on 20.12.2019. Challenging the same C.R.P(MD)No.312 of 2020 has been filed.

5. It is a settled position of law, an application under Order XXI, Rule 97 of CPC., should be treated as a plaint and the claim petitioner should establish his title, independent of that of the judgment debtor in the suit. Therefore, the question of conducting a roving enquiry by calling for records in the suit to verify whether the original defendant



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was served or not, does not arise. The Trial Court has rightly dismissed the said application. Therefore, the Civil Revision Petition in C.R.P(MD)No.312 of 2020 stands dismissed.

6. To summarise, C.R.P(MD)No.1990 of 2019 stands allowed. C.R.P(MD)No.312 of 2020 stands dismissed. The Executing Court is directed to dispose of E.A.No.3 of 2017 and E.P.No.24 of 2016 on or before **31.08.2024**. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

05.04.2024

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

To

1.The Principle District Munsif cum
Judicial Magistrate, Thiruvadanai,
Ramanathapuram.

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2.The District Munsif cum Judicial Magistrate,
Thiruvadanai,
Ramanathapuram District.

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



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)Nos.1990 of 2019 & 312 of 2020

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