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C.R.P. (PD) .No.243 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.243 of 2025
and C.M.P.Nos.1578 & 1580 of 2025

1.D.Parvathi

2.A.N.Damodaran

3.D.Suriyaprakash

.. Petitioners

Vs.

1.Venkammal

2.Narassammal

3.Tamil Nadu Slum Clearance Board,
Rep by its Chairman,
No.5, Kamarajar Salai,
Chennai – 600 005.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket order made in I.A.No.2 of 2024 in O.S.No.7258 of 2024 dated 21.12.2024 pending on the file of the XVI Assistant Judge, City Civil Court, Chennai and allow the same by allowing this C.R.P.



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For Petitioner : Ms.Selvi George

ORDER

This civil revision petition challenges the issuance of notice by the learned XVI Assistant Judge, City Civil Court, Chennai.

2.O.S.No.7258 of 2024 is a suit seeking for the following reliefs:

“(i)To declare that the Judgment and Decree made in O.S.No.1398 of 2005 dated 23.06.2015 is a nullity, invalid in the eye of law, and cannot be enforced against the present plaintiff.

(ii)Permanent injunction restraining the 1st defendant, its agent, servants or any other person in any manner from interfering with the peaceful possession and enjoyment of the plaintiff in the suit schedule property. Except Due process of Law.”

3.Earlier there had been another suit in O.S.No.1398 of 2005 instituted



by the predecessor in title of the 1st defendant against the defendants 2 & 3 in the present proceeding. That suit came to be decreed on 26.03.2015. It was a suit for declaration of title and for recovery of possession.

4.Since the plaintiff therein was empowered with a decree, he filed E.P.No.633 of 2016. The decree was sought to be obstructed by the first civil revision petitioner pleading that she is in possession of the property and that the decree holder is not the owner of the property as the property is vested with the Slum Clearance Board.

5.The obstruction petition was numbered in E.A.No.3 of 2023. After the receipt of a counter and enquiry, the learned Trial Judge came to a conclusion that the obstruction petition is untenable and dismissed the same.

6.Being a decree in terms of Order XXI Rule 103 of the Civil Procedure Code, the civil revision petitioner preferred a regular appeal before the learned II Additional City Civil Court at Chennai. This appeal was numbered as A.S.No.327 of 2024. Along with the appeal, the civil revision



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petitioner moved an application in I.A.No.2 of 2024. The learned District Judge was pleased to direct that a fresh suit has to be filed challenging the earlier decree and till then ordered *status quo*.

7.Ms.Selvi George pleads that it was pursuant to the suggestion made by the learned II Additional City Civil Judge, Chennai, that the present suit came to be filed in O.S.No.7258 of 2024. She states that the II Additional City Civil Judge, Chennai, is not extending the stay of the execution proceedings and the Trial Court is not granting interim order to that effect and she has been put in between the devil and deep blue sea. Hence, she has moved this revision invoking Article 227 of the Constitution of India.

8.I have considered the submissions of Ms.Selvi George.

9.In terms of Order XXI Rule 101 of the Civil Procedure Code, all questions (including right, title and interest in the property) arising between the parties have to be decided only under Order XXI Rule 97 or under Order XXI Rule 99 of the Civil Procedure Code. The provision itself bars a separate



suit to probe into these questions. Therefore, the *prima facie* view taken by the learned XVI Assistant City Civil Judge, Chennai, that the suit is not maintainable cannot be taken exemption to. I am entirely *ad idem* with the view taken by the learned Judge.

10.As a party has invoked remedy of the Appellate Court, the view of the Appellate Court also has to be tested. The learned Appellate Judge has stated that till the civil revision petitioner files a suit against the earlier decree, an interim order has to be granted.

11.When the Civil Procedure Code bars filing of a separate suit, I am afraid the view of the learned II Additional Judge does not stand scrutiny. At best, it is an observation made by the learned Judge in order to restrict the interim order granted. The civil revision petitioner cannot come to a conclusion that the learned Judge had finally concluded that the only remedy for the plaintiff is to file a fresh suit. As pointed out above, since the remedy of a separate suit is barred, it is for the civil revision petitioner to workout her rights in A.S.No.327 of 2024. Suffice it to state, the observation made by the



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learned II Additional Judge on 12.11.2024, will not prevent the plaintiff from filing of a fresh application or pursuing the existing application for stay, in case, she makes out a case before the learned Judge.

12. With the above observations, this Civil Revision Petition is dismissed. The learned II Additional City Civil Judge, Chennai, shall consider I.A.No.2 of 2024 in A.S.No.327 of 2024 without reference to the observation that the remedy of the civil revision petitioner herein is only to file a separate suit. Consequently, the connected Miscellaneous Petitions are closed. No costs.

30.01.2025

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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To

- 1.The XVI Assistant Judge,
City Civil Court,
Chennai.
- 2.The II Additional Judge,
City Civil Court,
Chennai



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V.LAKSHMINARAYANAN, J.

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