



CRP NPD.No.210 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP NPD No.210 of 2025 & CMP.No.1395 of 2025

N.K.Kaliaperumal

. . . Petitioner

Versus

1. R.Jayakumar
2. Rebeka
3. Reachal
4. Samuvel
5. Chalci

. . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the docket Order in E.A.No.7 of 2024 in E.P.No.61 of 2021 in O.S.No.24 of 2011 dated 20.12.2024 on the file of the learned Additional District Judge, Villupuram.

For petitioner : Mr.N.Suresh

For respondents : Mr.S.Kaithamlaikumaran

ORDER



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Challenging the Order of the Execution Court allowing the application filed for police protection to remove the obstructions, the present Civil Revision Petition has been filed.

2. The main contention of the learned counsel appearing for the revision petitioner before this Court is that he has already filed a suit in O.S.No.309 of 2014 on the file of the District Munsif Court, Viluppuram as against the respondents herein for permanent injunction. That suit has been decreed as early as on 18.06.2015 and that matter has reached finality. It is his further contention that he is in possession of the property as a part performance of the agreement executed by the original owner. Suppressing the same, an exparte decree has been obtained. Be that as it may.

3. In an earlier occasion, this Court has clearly held that an application under XXI Rule 97 is only to be filed by the decree holder to remove the obstruction. Without filing such an application to remove the



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obstructions, now an application has been filed for police protection and that application has been allowed. Therefore, submitted the very Order without proper adjudication under Order XXI Rule 97[2] of Code of Civil Procedure and Ordering police protection is not valid in the eye of law.

4. Whereas, the learned counsel appearing for the respondent contended that the revision petitioner has already filed a revision petition before this Court and the same has been dismissed. Hence, the decree holder is entitled to file an application for removal of obstruction.

5. The Order impugned came to be passed in an application filed by the decree holder in E.A.No.7 of 2024. The application and the affidavit filed by the decree holder indicate that there was obstruction and resistance has been shown by the revision petitioner. Therefore, he had sought for police protection.

6. It is relevant to note that when there is resistance or obstruction by



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any person in obtaining possession of the subject property, proper procedure for the decree holder is to file an application under Order 21 Rule 97 of Code of Civil Procedure for removal of such obstruction or resistance. When any such an application has been filed, the Execution Court shall proceed to adjudicate upon the application and the trial Court shall determine all questions relating to right, title or interest in the property and the same shall be determined in the application and not by filing a separate suit as per Order XXI Rule 101 of Code of Civil Procedure. However, the executing Court without resorting to such a procedure ordered police protection without even adjudicating upon the rights of the revision petitioner. In such view of the matter the Order of the trial Court has to be set aside.

7. Accordingly, this Civil Revision Petition is allowed. The matter is remanded to the trial Court and the trial Court is directed to give opportunity to the revision petitioner to file his reply and adjudicate the issue on its own merits and pass a detailed Order within a period of three months from the date of receipt of a copy of this Order. No costs. Consequently, connected



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miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The Additional District Judge,
Villupuram.



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N. SATHISH KUMAR, J.

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