



A Nos.1882,1884 and 1885 of 2025
in
EP No.112 of 2022

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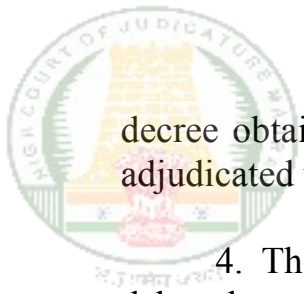
MASTER
22.08.2025

Common Order

1. These three applications have been filed by the applicant/obstructor. A.No.1882 of 2025 is to record the obstruction of the petitioner in EP No.112 of 2022 in Trans CS No.449 of 2008 in A.No.643 of 2016 pending on the file of the Hon'ble High Court. A.No.1884 of 2025 is to stay the operation of the order of delivery dated 07.03.2025 and A.No.1882 of 2025 is to not to record the delivery of possession of the property dated 07.03.2015 in the above EP.

2. The facts of the case is that, the 1st and 2nd respondents/Decree holders got a decree in their favour against the 3rd respondent/Judgment debtor in TrCS.449 of 2008 for partition and a final decree was passed on 10.03.2020 that the eastern portion shown in the (1st mode) of the Advocate Commissioner's report more fully set out in the suit schedule, shall be allotted to the plaintiff and the western portion shown in the (1st mode) of the Advocate Commissioner's report more fully set out in the suit schedule, shall be allotted to the defendant. The suit for was filed in the year 2008 and after a long battle the suit was ended in the year 2020. The Judgment debtor has not filed any appeal till date and at the same time he refused to hand over the property to the decree holder and hence the decree holder filed the above execution petition EP No.112/2022.

3. After due contest made by the 3rd respondent/Judgment debtor this EP was allowed and delivery was ordered on 12.07.2024. Thereafter, the 1st and 2nd respondents / Decree holders have taken delivery of possession through the process of Court on 06.03.2025 and a memo was filed by the Decree holder to that effect and Sought to terminate the EP. At this juncture these applications have been taken by the applicant/obstructor claiming that he is an independent tenant inducted by the mother of the Judgment debtor and is in the possession of the property for more than the statutory period and also held possession as his own during the pendency of the case between the Judgment debtor and the decree holder. The applicant further stated that the mother of the judgment debtor orally agreed to sell the portion occupied by the applicant and collected the money regularly. He further stated that the mother of the judgment debtor has earlier executed a settlement to the sons and later point it was cancelled by her which clearly establishes her intention. Further case of the applicant is that both the decree holder and the judgment debtor colluded with each other and have made all efforts by suppressing the entire proceedings only with an intention to evict him from the property. Therefore, he shall not be evicted, by exercising the

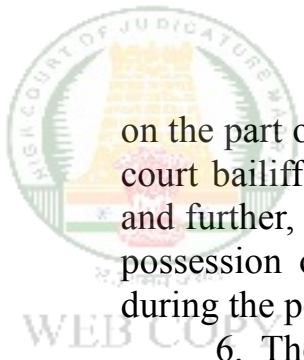


decree obtained against the Judgment debtor and his claim has to be independently adjudicated upon by this court and his obstruction is to be recorded.

4. The learned counsel for the decree holder submitted that the judgment debtor has set up the applicant as obstructor to delay the recording of the delivery of the vacant possession to the decree holders by execution of the delivery warrant through court bailiff after the judgment debtor has delayed the execution of this EP almost for about three years. He further submitted that in his entire affidavit filed in support of the application the applicant has nowhere specified the date on which he came into

possession of the property, under whom and in what capacity and to what extent of property he is in possession. Similarly, the applicant has also not stated as to what is his independent right over the schedule property that has been handed over to the decree holders and the applicant has also not pleaded or produced any document to establish such an independent right over the said property and therefore the application claiming himself to be the obstructor is not at all maintainable and these applications are liable to be dismissed. This applicant colluded with the Judgment debtor and filed these applications in order to frustrate the decree holders not to enjoy the fruits of the decree.

5. The learned counsel for the applicant/3rd party argued that he is an independent tenant inducted by the mother of the judgment debtor. No documentary evidence is filed to establish that the applicant is a tenant under the mother of the judgment debtor. Further, it is seen from the affidavit filed in support of this application nowhere it is stated that when the applicant came into possession of the property, to what extent and in what capacity. There is no averment about the dates and events about when the tenancy was started and in respect of which portion and to what extent of the property. The affidavit filed by the applicant is completely based on vague allegations. This is only an afterthought of the Judgment debtor to take these applications through the applicant to frustrate the decree holder not to enjoy the fruits of the decree. Further, it is seen from the record that after the issuance of the delivery warrant by this court, on 20.12.2024 the bailiff of this Court has gone to the property on 12.08.2024 and thereafter returned the warrant and executed stating that there are totally seven portions in the premises, three portions in the ground floor (1st portion is door locked), three portions in the 1 floor (1st and 2nd portions are door locked). Subsequent to which the decree holder filed application for police aid and break open in A Nos.6647 and 6648/2024 and the same was allowed on 20.12.2024. Once again the bailiff of this court went to the premises on 06.03.2025 and the warrant was executed by the bailiff and vacant possession was handed over to the 1st and 2nd respondents/ decree holders, On perusal of the bailiff report dated 7.3.2025 available before this court the name of the present applicant has not been mentioned and further the bailiff report says that there were some tenants in occupation of the premises who after instances made by the bailiff vacated the portions and vacant possession was handed over. While so, there is no explanation



on the part of the applicant as to why he has not obstructed the execution through the court bailiff which raises a doubt about he being in the possession of the property and further, the applicant has not produced an iota of evidence to show that he was in possession of the property at any time either during the pendency of the suit or during the pendency of the execution proceedings.

6. The other contentions raised by the applicant that the final decree was ordered by the Court based on the report of the Advocate Commissioner which didn't specify the person in possession of the property and their status as persons cannot be entertained in this application because a decree was already passed and as execution court this Court cannot go beyond the decree. On contra, the above averments in the affidavit of the applicant would only go to show that he speaks for the judgment debtor and has filed these applications only to protract the execution proceedings and to prevent the decree holders from enjoying the fruits of the decree. Moreover, here is a case where the delivery warrant issued by this Court was executed and the vacant possession was already handed over to the decree holders through the process of Court. In view of the forgoing discussions, this court do not find any merits on these applications.

7. In fine, these applications are dismissed. No orders as to costs.

MASTER