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C.R.P.No.3984 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23..07..2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.No.3984 of 2023

and

C.M.P.No.24430 of 2023

1.Smt.Masthamma

2.E.Nagaraj

..... Petitioners

-Versus-

K.Jayakumar

..... Respondent

Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the order dated 03.06.2023 made in E.P.No.7 of 2022 in O.S.No.201 of 2001 on the file of the learned District Munsif, Ootacamund, The Nilgiris District.

For Petitioners : Mr.C.Prabakaran

For Respondent : Mr.M.Mahamani



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ORDER

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This Civil Revision Petition challenges the docket order dated 03.06.2023 passed by the learned District Munsif, Ootacamund, The Nilgiris District, in E.P. No. 7 of 2002. The said order directs delivery of immovable property belonging to the revision petitioners/judgement debtors and mandates steps for removal of a pucca house constructed with brick and mortar in place of a zinc shed measuring 84 square feet, which originally existed at the time of filing the execution petition.

2. The respondent is the plaintiff/decreed-holder, and the revision petitioners are the defendants/judgement debtors in the suit.

3. The suit in O.S. No. 201 of 2001 was filed by the respondent before the District Munsif Court, Udthagamandalam, The Nilgiris District, seeking a declaration that he is the absolute owner of the property measuring 195 square feet in R.S. No. 3952/1A1A, Ootacamund Town, along with the shed described in the schedule, and for delivery of possession.

4. Originally, the suit was dismissed by the trial court by judgement and decree dated 27.03.2014. However, on appeal in A.S. No. 16 of 2014, the learned Subordinate Judge, Udthagamandalam, reversed the trial court's judgement and decree and decreed the suit as prayed for, by judgement dated



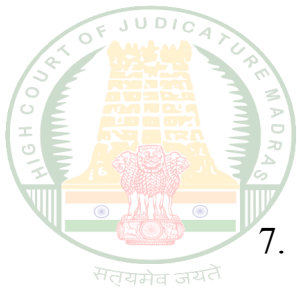
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11.03.2019. Aggrieved by the same, the defendants preferred a second appeal in S.A.SR No.112143 of 2022 with a delay of 1544 days in filing the appeal.

Along with the appeal, they filed an application for condonation of delay, which was numbered as C.M.P. No.19700 of 2022. The said application was dismissed on merits by order dated 21.02.2023. Consequently, the unnumbered second appeal stood rejected, and the judgement and decree in favour of the plaintiff attained finality.

5. During the execution proceedings, the executing court found that a pucca structure made of brick and mortar had been erected in place of the original zinc shed measuring 84 square feet. Consequently, the court directed the decree-holder to take appropriate steps for delivery of possession. At this stage, the present revision petition has been filed challenging the said direction.

6. When the decree itself was for declaration and possession of the immovable property, any construction raised by the defendants during the pendency of the suit, even if it is a pucca structure, was done at their own risk and peril. Such construction amounts to an encroachment. The mere fact that a permanent construction has been raised cannot stand in the way of executing the decree. Any such construction, made in deliberate violation of the decree with a view to obstruct its execution, cannot be condoned by this Court.



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7. This court finds no merit in the revision petition. Accordingly, the

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In the result, the revision petition stands dismissed. The Executing Court is directed to dispose of the Execution Petition in E.P. No. 7 of 2002 as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order, after removal of the encroachments. No order as to costs. Consequently, the connected CMP stands closed.

Index : yes / no
Neutral Citation : yes / no

23..07..2025

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To

1.The District Munsif, Udthagamandalam, The Nilgiris District.



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