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C.R.P.[NPD].No.5126 of 2024
and C.M.P.No.28751 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.5126 of 2024
and C.M.P.No.28751 of 2024

Sumathi

.. Petitioner

Vs.

1.Chinnammal
Krishnan (Died)
Ellammal (Died)
2.Asaithambi

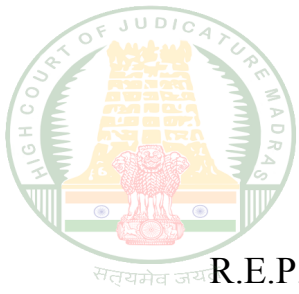
.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order dated 20.11.2024 passed in R.E.A. No. Nil of 2024 in R.E.P.No.10 of 2007 in O.S.No.130 of 1997 on the file of the District Munsif Court, Omalur.

For Petitioner : Mr.P.Mani
For R1 : Mr.T.Ganesan

ORDER

This Civil Revision Petition has been filed seeking to set aside the docket order dated 20.11.2024 passed in R.E.A. No. Nil of 2024 in



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R.E.P.No.10 of 2007 in O.S.No.130 of 1997 on the file of the District
Munsif Court, Omalur.

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2.The brief facts of the case are as follows:

2.1.An *exparte* decree dated 01.11.2004 appears to be obtained in O.S.No.130 of 1997 by the 1st respondent as against one Krishnan and Ellammal, who were since deceased. The execution petition has been filed by the 1st respondent to enforce the said judgment and decree. The petitioner herein filed an application under Order 21 Rule 97 CPC objecting the delivery on the ground that the suit property is the ancestral property of petitioner's husband. On 21.01.2008, the suit property was devolved in favour of petitioner's father-in-law and his brother. On the same day, the brother of the petitioner's father-in-law sold his share to her father-in-law. Later, on 31.10.2011, the petitioner's husband purchased the said property from his parents. Thereafter, the petitioner's husband settled 813 sq.ft out of the total extent of 1120 sq.ft in her favour vide a registered settlement deed dated 17.12.2020.



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2.2.The application filed by the petitioner under Order 21 Rule 97 CPC, objecting delivery was returned for the reason that the petitioner has already filed a suit in O.S.No.257 of 2022 seeking for the same relief. Aggrieved over the same, the present Civil Revision Petition has been filed.

3.Learned counsel appearing for the petitioner, at the out set, submitted that the executing Court ought not to have returned the application.

4.Mr.T.Ganesan, learned counsel who takes notice for the 1st respondent, would submit that the Executing Court has rightly returned the application and no interference of this Court is required.

5. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

6. Upon hearing the learned counsel and on perusal of the records, it is seen that the application filed under Section Order 21 Rule 97 CPC has



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been returned merely on the ground that a separate suit has already been filed by the petitioner seeking relief of declaration and injunction over the subject property. Pendency of separate suit may not be a ground to reject the application filed objecting the execution proceedings.

7. When a decree holder files E.P. for execution of the decree, as long as there is no stay granted by the appellate Court, there is no impediment for the Executing Court to enforce the decree. However, a person, whose rights are involved over the subject property and has been in possession of the said property, even though not a party to the decree, can resist such decree by seeking adjudication of his objections under order 21, Rule 97 of the Civil Procedure Code. In fact, the scheme of the Code clearly adumbrates that when an application has been made under Order 21 Rule 97 CPC, the Court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a



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decree subject or right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. Therefore, the docket order passed by the Executing Court, returning the application is set aside and the Executing Court is directed to number the application and dispose of the objections of the petitioner filed under Order 21, Rule 97 CPC after giving opportunity to the parties in accordance with law. Till the disposal of the said application, the delivery if already ordered, shall be postponed till the disposal of the application.

8.In the result, the Civil Revision Petition is allowed. No costs.
Consequently, connected miscellaneous petition is also closed.

06.01.2025

rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

Note: The Registry is directed to return the original order.

To:

The District Munsif Court, Omalur.

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N.SATHISH KUMAR, J.

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