



C.R..P.(NPD)(MD).No.3178 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD)(MD)No.3178 of 2024

and

C.M.P(MD) No.18285 of 2024

Nadanasabapathy

... Petitioner/Petitioner

Vs.

1. Ponmozhi

2. Muthumahesh

3. Karthik

(3rd Petitioner through the Power Agent

2nd Petitioner namely Muthumahesh)

... Respondents 1 to 3/

Respondents 1 to 3

4. Rajam

5. Karthikraja

6. Murugesan

7. Ashokan

8. Vijayarani

9. Jeyanthi

10. Maragatharajan



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11. Vijayakumar

12. Raja Rajacholan

13. Balu

14. Kumar

15. Gomathi

16. Vasuki

17. Saravanan

18. Devi

19. Kannan

... Respondents 4 to 19/
Respondents 4 to 19

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 13.12.2023 made in E.A.No.3 of 2019 in E.P.No.2 of 2019 in O.S.No.228 of 2000 on the file of the District Munsif cum Judicial Magistrate, Gandarvakottai.

For Petitioner : Mr.S.I.Muthiah

For R1 : Mr.A.Arun Prasad

ORDER

A third party to O.S.No.228 of 2000 on the file of the District Munsif -cum -Judicial Magistrate, Gandarvakottai, is the revision petitioner herein.



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2. One Somasundara Pandaram had filed O.S.No.228 of 2000 on the file of the District Munsif cum Judicial Magistrate, Gandarvakottai, for the relief of ejectment. The said suit was decreed on 18.12.2003. The defendants therein had filed A.S.No.56 of 2006 before the Sub Court, Pudukkottai, which was dismissed on 20.04.2009. The defendants had preferred the second Appeal in S.A.No.1173 of 2009 before this Court on 12.12.2011. This Court has modified the ejectment decree to the effect that the decree holder would be entitled to take possession of the property subject to the condition that he shall pay the estimated value of the buildings or the structure put up by the defendants on the site.

3. Armed with the decree in S.A.No.1173 of 2009, the plaintiff/decreed holder had initiated execution proceedings. Pending Execution proceedings, the revision petitioner, who is a third party suit had filed in E.A.No.3 of 2019 claiming title over the property. Though the application has been filed under Section 47 of C.P.C, it should be construed to be an application under Order 21 Rule 97 of C.P.C. The trial Court, after considering the submissions had ultimately rejected the application. Challenging the same, the present Civil Revision Petition has been filed.



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4. According to the learned counsel appearing for the revision petitioner, he is one of the co-sharers of the property and claiming partition of his share, he had filed O.S.No.448 of 2015 before the Sub Court, Pudukkottai and the same is pending. In such circumstances, if the delivery is ordered that would affect his rights over the property.

5. However, the learned counsel appearing for the first respondent herein had contended that the suit for ejectment has been decreed as against the tenants and as a purchaser from the original plaintiff, they are entitled to prosecute the execution proceedings. According to him, they have also deposited the amount valued by the Advocate Commissioner as directed by the High Court.

6. Heard both sides and perused the records.

7. A perusal of the order passed by the Execution Court, in E.A.No.3 of 2019 reveals that this application has been filed as a claim petition under Order 21 Rule 97 of C.P.C. Therefore, any order passed under this provision should only construed to be a deemed decree under Order 21 Rule 103 of C.P.C.



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8. In such circumstances, the present Revision Petition is not maintainable. However, the revision petitioner is at liberty to file an appeal before the appropriate Court. It is made clear that this Court has not considered the merits of the claim made by the revision petitioner.

9. With the above said observations, these Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

07.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The District Munsif cum Judicial Magistrate,
Gandarvakottai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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