



C.R.P(MD)No.3238 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.01.2025**

CORAM

**THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.3238 of 2024
and
C.M.P(MD)No.18649 of 2024

S.S.Prabhakaran

... Petitioner

Vs.

1.P.Marimuthu

2.R.Subburaj

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records of the petition and order passed in E.A.No.2 of 2022 in E.A.No.1 of 2021 in E.P.No.11 of 2020 in O.S.No.26 of 2013 on the file of the Additional District and Sessions Judge, Srivilliputhur, dated 06.01.2024 and set aside the same by allowing this Civil Revision Petition and pass such further or other orders as this Court.

For Petitioner : Mr.P.Athimoolapandian
For R-1 : Mr.R.J.Karthick



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ORDER

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This Civil Revision Petition is preferred against the order passed in E.A.No.2 of 2022 in E.A.No.1 of 2021 in E.P.No.11 of 2020 in O.S.No.26 of 2013 on the file of the Additional District and Sessions Judge, Srivilliputhur, dated 06.01.2024.

2. According to the revision petitioner, the revision petitioner has filed a suit for specific performance in O.S.No.26 of 2013 before the Principal District Judge, Srivilliputhur. Pending suit, the second respondent's Counsel reported 'No instructions' and therefore, the suit was posted for *ex parte* evidence. On 13.03.2019, the revision petitioner was examined as P.W.1 and Exhibits A.1 to A.5 were marked on the side of the petitioner. The Trial Court reserved the suit for pronouncing judgments on 20.03.2019. While so, the first respondent filed two applications in I.A.Nos.1 and 2 of 2019 for re-open and to implead him as a necessary party in the said suit. However, the above applications were dismissed on 18.07.2019. Against which, no revision was preferred by the first respondent herein. Thereafter, the first respondent filed



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A.S.No.158 of 2020 against the decree passed in the suit in O.S.No.26 of 2013 and the same is still pending. Meanwhile, the revision petitioner filed an application in E.P.No.11 of 2020 before the Additional District and Sessions Court, Srivilliputhur. Pending Execution proceedings, the first respondent filed an application in E.A.No.1 of 2021 under Order XXVII, Rule 97 of the Civil Procedure Code, 1908 and the same was posted on 26.10.2022 for enquiry. Since the first respondent failed to appear, the said application was dismissed. Thereafter, the first respondent filed E.A.No.2 of 2022 under Order IX, Rule 9 of CPC for restoration of the said application. The Executing Court allowed the said application on cost, directing the first respondent to pay a sum of Rs.5,000/-. Aggrieved by this, the present revision is preferred.

3. The learned Counsel appearing for the revision petitioner would submit that the Executing Court failed to consider that the first respondent is the subsequent purchaser of the suit property, who is not a *bona fide* purchaser and the suit was filed for specific performance in view of the agreement between the petitioner and the second respondent.



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The first respondent should work out his remedy in the appeal filed instead of filing an application under Order XXI, Rule 97 of CPC which is not maintainable. It is submitted that the Trial Court without considering the above facts erroneously allowed the said application in E.A.No.2 of 2022 and prays for setting aside the order, dated 06.01.2024

4. Heard the learned Counsel for the petitioner and perused the materials available on record.

5. Admittedly, the said application in E.A.No.2 of 2022 was filed by the first respondent for restoring the application in E.A.No.1 of 2021 filed under Order 21, Rule 97 of CPC, which was dismissed for default on 26.10.2022. Whether the said application filed under Order XXI, Rule 97 of CPC can be allowed or not is for consideration by the Executing Court. Therefore, the merit of the said application cannot be considered in this revision petition. The revision is preferred only against the order passed in the restoration petition in E.A.No.2 of 2022 for restoring E.A.No.1 of 2021. The said application in E.A.No.2 of 2022 was allowed



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by the Executing Court only on cost.

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6. No infirmity or irregularity found in the order passed by the Executing Court in the said application. However, the Trial Court is directed to dispose the said application in E.A.No.1 of 2021, within a period of one (1) month from the date of receipt of a copy of this order on its own merits and in accordance with law including the question whether the same is maintainable or not.

7. With the above observation, the present revision petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

02.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To
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The Additional District and Sessions Judge,
Srivilliputhur.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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