



C.R.P(NPD)(MD)No.1962 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.1962 of 2023

and

C.M.P.(MD)No.9851 of 2023

Beautrice Mary

... Petitioner

Vs

1.T.Francis Xavier

2.R.Varghese

... Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 26.04.2023 made in E.A.No.8 of 2023 in E.P.No.73 of 2018 in O.S.No.140 of 2011 on the file of the Sub Court, Padmanabhapuram.

For petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.M.L.Ganesh



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ORDER

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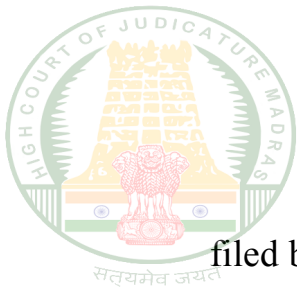
This Civil Revision Petition is filed against the fair and decreetal order dated 26.04.2023 made in E.A.No.8 of 2023 in E.P.No.73 of 2018 in O.S.No.140 of 2011 on the file of the Sub Court, Padmanabhapuram.

2. The facts in brief:

Suit in O.S.No.140 of 2011 was filed by the first respondent herein viz., T.Francis Xavier against the revision petitioner seeking the relief of recovery of Rs.8,16,531/- and subsequent interest and costs. Suit was decreed as prayed for with costs. The said decree was put into execution in E.P.No.73 of 2018. In that petition, the present E.A.No.8 of 2023 was taken out by this revision petitioner seeking to review the order dated 24.11.2022 in E.A.No.5 of 2022. That application was dismissed with costs. Against which, this revision is preferred.

3. Heard both sides.

4. In the Execution Petition sale was conducted and the property was sold on 11.02.2021. To set aside the sale E.A.No.5 of 2022 was

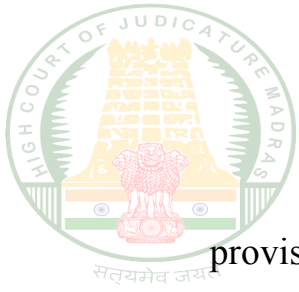


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filed by the revision petitioner under Order 21 Rule 72(3) of C.P.C. That petition was dismissed on merits, after hearing the both sides, on 24.11.2022. Now this review petition is filed stating that during the enquiry process in E.A.No.5 of 2022, he omitted to mark the deposition copy of P.W.2 in the main suit. Because of the mistake committed by him, E.A.No.5 of 2022 was dismissed. Therefore, it must be reviewed.

5. How this prayer is maintainable is not understandable. Review can be entertained only if there is any error apparent on the face of the record or illegality. Here, review is sought only on the basis of the mistake committed by the revision petitioner in not marking deposition copy of the P.W.2 in the main suit. Therefore, such a prayer is not maintainable under the guise of review.

6. Moreover, deposition copy of a living person cannot be permitted to be marked as evidence. Therefore, without going to the other aspects, on the sole ground, I am of the considered view that the order passed by the Execution Court requires no interference. Even though it is contended by the respondents herein that only appeal



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provision will lie and the revision will not lie. Even appeal could not lie, against the order of dismissal of a review application, only revision will lie. But, here, as mentioned above, E.A.No.8 of 2023 itself is a misconstrued petition. When the E.A itself is not maintainable, review also does not lie. Therefore, this revision fails and the same is liable to be dismissed.

7. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

28.01.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
vsm



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To

- 1.The Sub Court, Padmanabhapuram.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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