



WEB COPY

**THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 28.02.2013**

**CORAM**

**THE HONOURABLE MR. JUSTICE D. HARI PARANTHAMAN**

**C.R.P. (NPD) (MD) .No.397 of 2013**

**and**

**M.P. (MD) .No.1 of 2013**

Muthulakshmi

.. Petitioner

Vs.

Arul Migu Veerammal Kaliamman Thiru Kovil,  
Athanoor,  
Rep by its Executive Officer,  
Periyavarni Taluk,  
Pattukottai,  
Thanjavur District.

.. Respondent

**Prayer:-**

Civil Revision Petition is filed under Article 227 of the Constitution of India to direct the District Munsif, Pattukottai to take the Execution Application in E.A.No.(unnumbered) of 2013 in E.P.No.37 of 2012 in O.S.No.112 of 2009 on the file of the District Munsif, Pattukottai and to decide it on merits.

For Petitioner :Mr.T.Lajapathi Roy

For Respondent :Mr.J.Gunaseelan Muthiah

**ORDER**

The learned counsel for the petitioner states that her father owned natham Poramboke land measuring about 8720 sq.ft. at Pookollai Sethu Road in Peravoornai Taluk in Tanjore District. He built house 40 years back. He was paying house tax from 1971 onwards. He was also enjoying electricity connection. The petitioner's father died.

2. While so, the respondent temple filed a suit in O.S.No.112 of 2009 alleging that the petitioner encroached the property of the temple land on 26.05.2007 and constructed a house.

3. According to the learned counsel for the petitioner, the petitioner suffered paralytic stroke on 20.06.2009 and therefore, she was not able to instruct her counsel. In these circumstances, an exparte decree was passed in O.S.No.112 of 2009 on 28.07.2009. Based on the exparte decree, E.P.No.37 of 2012 was filed and an exparte order was passed on 24.08.2012.

4. It is stated that I.A.No.84 of 2013 in O.S.No.112 of 2009 was filed to condone the delay of 1226 days in filing application to set aside the exparte decree and the said application is still pending. In view of the exparte decree and the exparte order in E.P.No.37 of 2012, the petitioner submitted that the respondent is taking steps to demolish the dwelling house and to take recovery of possession.



5. The learned counsel for the petitioner also produced photographs of the house and also copies of the house tax receipts right from 1971 onwards. In such circumstances, the petitioner has filed E.A. unnumbered of 2013 in E.P.No.37 of 2012 in O.S.No.112 of 2009 not to proceed further in the execution proceedings until a decision is rendered in I.A.No.84 of 2013 in O.S.No.112 of 2009. The application was returned by the Trial Court with an endorsement "Set aside petition not filed in time. Respondent already exparte on 24.08.2012. How this petition is not maintainable. Hence returned."

6. The learned counsel for the petitioner has submitted that the very application is not to set aside any order and it is only an application seeking stay of execution proceedings, in view of pendency of interlocutory application in I.A.No.84 of 2013 in O.S.No.112 of 2009. If execution proceedings proceeds further, without giving opportunity to the petitioner to contest the suit, the petitioner will put to irreparable loss.

7. The very case of the respondent in O.S.No.112 of 2009 is that the petitioner has encroached the property in the year 2007 has no basis, since the family of the petitioner have been in the property for the past 40 years. Whether the I.A.No.84 of 2013 in O.S.No.112 of 2009 is filed in time or not is irrelevant for numbering the said application. Hence, I am of the view that the Execution Court ought to have numbered the unnumbered E.A. of 2013 in E.P.No.37 of 2012 in O.S.No.112 of 2009. Accordingly, the Execution Court shall number the said unnumbered application forthwith.

8. From the above narration of facts, it is clear that the entire case is depending upon the out come of I.A.No.84 of 2013 in O.S.No.112 of 2009. Hence, the Trial Court is directed to dispose of the I.A.No.84 of 2013 in O.S.No.112 of 2009, within a period of two weeks from the date of receipt of a copy of this Order. The Execution Court shall not proceed further in E.P.No.37 of 2012 in O.S.No.112 of 2009, till a decision is rendered in I.A.No.84 of 2013 in O.S.No.112 of 2009.

9. In the result, the Civil Revision Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

jikr

To

The District Munsif, Pattukottai.

+1CC to M/s.J.Gunaseelan, Advocate in SR.No.11479

+1CC to M/s.T.Lajapathi Roy, Advocate in SR.No.11468

Order made in

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