

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.2687 of 2015 &

M.P.No.1 of 2015

Margabandhu (died)

M.Sadasivam

... Petitioner

v.

1.Perumal

2.M.Krishnan

3.Neelamegam

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 17.11.2014 in E.P.No.109 of 2009 in E.P.No.183 of 2004 in O.S.No.697 of 1995 on the file of the District Munsif Court, Katpadi, Vellore District.

For Petitioner : Mr.P.Mani

ORDER

Challenging the order passed in E.P.No.109 of 2009 in E.P.No.183 of 2004 in O.S.No.697 of 1995 on the file of the District Munsif Court, Katpadi, the legal representative of the deceased judgment debtor has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.697 of 1995 for specific performance in the year 1995. The suit was decreed in favour of the plaintiff on 28.10.1996.

3. Pursuant to the decree passed in O.S.No.697 of 1995, the plaintiff filed an Execution Petition in E.P.No.109 of 2009. Prior to the filing of the Execution Petition, the defendant had died and the Execution Petition was filed as against the legal representative of the deceased judgment debtor.

4. In the year 2009, the petitioner filed a suit in O.S.No.1133 of 2009 to set aside the judgment and decree passed in O.S.No.697 of 1995 stating that his father is not the absolute owner of the property and that it is an ancestral property.

5. The Trial Court, after trial, dismissed the suit. Aggrieved over the same, the petitioner preferred an appeal and the Lower Appellate Court dismissed the appeal. Aggrieved over the dismissal of the suit in O.S.No.1133 of 2009, the petitioner has preferred a Second Appeal, which according to the learned counsel for the petitioner, is pending before this court.

6. It is pertinent to note that even after a lapse of nearly 20 years, the plaintiff is not in a position to execute the decree passed in O.S.No.697 of 1995. That apart, even the suit filed by the petitioner to set aside the judgment and decree passed in O.S.No.697 of 1995 was also dismissed by the court below. While so, the contention raised by the petitioner that the Execution Petition filed by the decree holder is liable to be dismissed cannot be accepted.

7. The Execution Court taking into consideration all these aspects rightly dismissed the application. That apart, the petitioner is bound to honour the decree passed in O.S.No.697 of 1995, unless it is set aside by the competent court. Since the decree passed in O.S.No.697 of 1995 has not been set aside by the competent court, the order passed in the Execution Petition in E.P.No.109 of 2009 in E.P.No.183 of 2004 allowing the same is perfectly correct.

8. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : No
Internet : Yes

09.07.2015

Rj

To

The District Munsif Court,
Katpadi,
Vellore District.

M. DURAISWAMY,J.,

Rj

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