

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.((PD) No.1247 of 2015
and M.P.No.1 of 2015

P. Sumathi

..... Petitioner

vs.

1. K. Krishna Gounder
2. Primary Agricultural Co-op Bank,
Varathampalayam,
Kattampatty Post,
S.S. Kulam Via,
Coimbatore-641 107

3. M. Prabakaran

.... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order passed in E.A.No.221 of 2013 dated 5.3.2015 in E.A.No.61 of 2006 on the file of Principal District Judge, Coimbatore in E.P.No.2 of 2004 on the file of Deputy Registrar, Cooperative Societies.

For Petitioner : Mr.K.M. Vijayan, SC for
Mr.V. Sivakumar

For R.1 : Mr.R. Murali
For R.2 : Mr.L.P. Shanmuga Sundaram
For R.3 : Mr.G. Ponnambala Thiagarajan

ORDER

The Civil Revision Petition has been filed by the petitioner, challenging the order passed in an Application in E.A.No. 221 of 2013 , filed under Order 21 Rule 97 and Rule 99 of Civil Procedure Code. This Court raised an objection, with regard to the maintainability of the Civil Revision Petition, since appeal remedy is available to the petitioner, challenging the order passed in the application filed under Order 21 Rule 91 and Rule 99 of Civil Procedure Code.

2. The Hon'ble Supreme Court also in the judgment reported in **2014 (6) CTC 98 (Sameer Singh and another vs Abdul Rab and Others)**, held that the revision filed under Article 227 of the Constitution of India, against the order passed in an Application under Order 21, Rule 97 and Rule 99 of Civil Procedure Code, is not maintainable, unless the Executing Court summarily rejected the application, without adjudicating the issues, on merits.

3. In the case on hand, the Executing Court had considered the oral and documentary evidence of the parties and adjudicated the matter on merits. In these circumstances, as laid down in the judgment reported in

2014(6) CTC 98 (Sameer Singh and another vs Abdul Rab and Others), the revision, filed under Sec.115 of Civil Procedure Code is not maintainable.

4. The petitioner filed a Memo dated 7.7.2015, seeking for permission of this Court to convert the Civil Revision Petition to Appeal.

5. The learned counsel for the respondents has no objection for converting the Civil Revision Petition to Appeal.

6. In view of the same, Registry is directed to convert the Civil Revision Petition to Appeal and shall list the matter before the concerned Hon'ble Portfolio Judge for admission.

7. The learned counsel appearing for the respondents submitted that till the appeal is listed for admission before the concerned Hon'ble Portfolio Judge, the respondents/decreed holders will not proceed with the Execution Petition.

M. DURAISWAMY,J.,

sr

8. The Registry shall convert the Civil Revision Petition to Appeal within two days from the date of receipt of copy of this order.

9. The Civil Revision Petition is ordered accordingly. No costs. Consequently, connected MP is closed.

07-07-2015

sr

Index:no
website:yes

Note: Issue order copy today

To

The Principal District Judge, Coimbatore

CRP(PD)No.1247/2015