

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1426 of 2015 &

M.P.No.1 of 2015

1.Yasodha

2.Devika

... Petitioners

v.

J.Aiyappan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.12.2014 made in E.A.No.31 of 2014 in E.P.No.1 of 2014 in O.S.No. 1488 of 2008 on the file of District Munsif cum Judicial Magistrate, Sriperumpudur.

For Petitioner : Mr.G.Dilip Kumar

ORDER

Aggrieved over the fair and final order passed in E.A.No.31 of 2014 in E.P.No.1 of 2014 in O.S.No. 1488 of 2008 on the file of District Munsif cum Judicial Magistrate Court, Sriperumpudur the judgment debtors have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No. 1488 of 2008 for declaration, recovery of possession and permanent injunction. The said suit was decreed in favour of the plaintiff on 10.10.2011. Aggrieved over the judgment and decree passed in O.S.No.1488 of 2008, the defendants preferred appeal in A.S.No.8 of 2012 on the file of Sub Court, Kancheepuram.

3. The learned counsel appearing for the petitioner submitted that A.S.No.8 of 2012 was dismissed for non prosecution and that the defendants have filed an application to restore the first appeal. In the mean time, the plaintiff filed an Execution Petition in E.P.No.1 of 2014 to execute the decree passed in O.S.No.1488 of 2008. The defendants filed an application in E.A.No.31 of 2014 in E.P.No.1 of 2014 to stay the execution petition.

4. When the defendants have preferred an appeal in A.S. No.8 of 2012 , the defendants could have moved a stay petition before the lower appellate court. Instead, they left the first appeal to be dismissed for default and moved the present application before the Execution Court to stay the execution proceedings. The Execution Court, taking into consideration the judgment reported in **2011(5) CTC 252 (Gridharilal Chandak and another v. Mohdi Ispahani)**, rightly dismissed the application.

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

08.04.2015

Index : No
Internet : Yes

Rj

To

The District Munsif cum Judicial Magistrate,
Sriperumpudur.

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M. DURAISWAMY,J.,

Rj

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