

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2015

CORAM

THE HON'BLE Mr. JUSTICE D.HARIPARATHAMAN

C.R.P.(NPD)No.3438 of 2015

and

M.P.No.1 of 2015

Dinesh alias Thirumaran

..Petitioner

/vs/

1.Savithiri

2.Chennakeswavan

..Respondents

Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the order passed by the learned Sub Judge, Dharmapuri in dismissing the R.E.A.No.3 of 2013 in R.E.P.No.77 of 2011 in O.S.No.84 of 2008 dated 20.07.2015.

For Petitioner :M/s DR.P.Vasudevan

For Respondents:Mr.R.Selvakumar

ORDER

The revision petitioner is the plaintiff in O.S.No.135 of 2004 on the file of the Subordinate Court, Dharmapuri. The second respondent herein is the first defendant in the aforesaid suit in O.S.No.135 of 2004. It is a partition suit. The revision petitioner had obtained injunction on 03.11.2004 in I.A.No.344 of 2004 in O.S.No.135 of 2004 restraining the second respondent herein from alienating the suit schedule properties.

2. The second respondent seems to have entered into an agreement with the first respondent on 25.05.2004 for sale of some of the properties in the suit schedule properties in O.S.No.135 of 2004. Since the second respondent did not execute the sale deed in pursuant to the agreement, the first respondent has filed O.S.No.84 of 2008 on the file of the Subordinate Court, Dharmapuri for specific performance. The said suit was decreed on 29.09.2008.

3. Now, the first respondent has filed a petition in R.E.P.No77 of 2011 in O.S.No.84 of 2008 for execution of the decree. While so, the revision petitioner filed an application in R.E.A.No.3 of 2013 in R.E.P.No.77 of 2011 in O.S.No.84 of 2008 seeking to stop

execution proceeding, since the revision petitioner herein filed an application to implead himself as party to the suit in O.S.No.84 of 2008 under Order 1 Rule 10 of Civil Procedure Code. The Trial Court has passed dismissal order dated 20.07.2015 in R.E.A.No.3 of 2013 in R.E.P.No.77 of 2011 in O.S.No.84 of 2008. Challenging the aforesaid order dated 20.07.2015, the present revision petition has been filed.

4. Heard both sides.

5. The suit in O.S.No.84 of 2008 is not pending. Even according to the revision petitioner, the application filed under Order 1 Rule 10 of CPC to implead himself as one of the defendant in O.S.No.84 of 2008, is yet to be numbered, it is doubtful as to whether such an application could be entertained, since the suit was already disposed of. However, the revision petitioner is at liberty to work out his remedy in the manner known to law. But, the revision petitioner being not a party in the suit in O.S.No.84 of 2008 cannot seek to stop the execution proceedings. Even if R.E.P.No.77 of 2011 in O.S.No.84 of 2008 is allowed and the sale deed was executed, the same could not affect the rights of the revision petitioner and therefore, he could work out his remedy in the manner known to law. He could not seek to stop the execution proceedings considering the facts and circumstance of the case. Hence, the Trial Court thought fit to reject the application in R.E.A.No.3 of 2013. I do not find any infirmity in the order passed by the Trial Court in R.E.A.No.3 of 2013. Hence, the revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge,
The Subordinate Court, Dharmapuri.

+1cc to Dr.P. Vasudevan, Advocate, S.R.No.46981
+1cc to Mr.R. Selvakumar, Advocate, S.R.No.47017

EV(CO)
EU(23/09/2015)

C.R.P. (NPD) No.3438 of 2015