

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.4606 of 2015
and M.P.No.1 of 2015

Sarojammal (deceased)

1.Gopi

2.Manimaran

... Petitioners

Vs.

Uma

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 19.08.2015 made in E.P.No.2 of 2012 in O.S.No.287 of 2006 on the file of the Principal District Munsif Court, Kancheepuram.

For Petitioners : Mr.S.L.Sudarsanam

ORDER

Challenging the order passed in the Execution Petition in E.P.No.2 of 2012 in O.S.No.287 of 2006 on the file of the Principal District Munsif Court, Kancheepuram, the Judgment Debtors have filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.287 of 2006 under Section 6 of the Specific Relief Act for re-delivery of the suit property.

3.According to the plaintiff, she was dispossessed from the suit property by virtue of the decree passed in O.S.No.489 of 1995.

4.As per Section 6 of the Specific Relief Act if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

5.In the case on hand, according to the plaintiff, she was dispossessed from the suit property by virtue of an erroneous decree passed in O.S.No.489 of 1995. The suit filed by the plaintiff was contested by the defendants and after contest, the trial Court decreed the suit by its judgment and decree dated 21.09.2010. Pursuant to the decree passed in O.S.NO.287 of 2006, the Decree Holder filed an Execution Petition in E.P.No.2 of 2012.

6.The learned counsel for the petitioners submitted that the Judgment Debtors have filed an appeal challenging the decree passed in O.S.No.287 of 2006 with a delay in filing the appeal. The said application to condone the

delay in filing the appeal was filed in the year 2010. Even after a lapse of more than five years, the Judgment Debtors have not prosecuted the application. Now, in the Execution Petition filed by the Decree Holder, the Judgment Debtors have taken a stand that the decree passed in O.S.No.287 of 2006 is not in conformity with the judgment passed in the said suit. The learned counsel for the petitioners submitted that in the operative portion of the judgment, the trial Court found that the plaintiff is entitled to re-delivery of the three rooms on the rear portion on the ground floor of the suit premises and in the decree it has been stated that the Decree holder is entitled to three rooms in the front portion on the ground floor of the suit premises. The Execution Court, taking into consideration the case of both parties, allowed the Execution Petition finding that the Execution Court cannot go beyond the decree passed in the suit and the Execution Court is bound by the decree passed by the trial Court.

7. When the appeal preferred by the Judgment Debtors with a delay in filing the appeal is pending for more than five years, they should have diligently prosecuted the petition in a proper manner, instead, they kept quiet for over five years and in the Execution Petition filed by the Decree Holder, by way of counter, they sought to stall the execution proceedings. As observed by the Execution Court, the Execution Court is bound by the decree in the suit and it cannot go beyond the decree passed by the trial Court. Unless the

decree passed by the trial Court is set aside or modified by a Competent Court, the Execution Court is bound to execute the decree. In view of the same, the order passed by the Execution Court in the Execution Petition is just and proper.

8. 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 the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

14.12.2015

To

The Principal District Munsif Court,
Kancheepuram.

M.DURAIWAMY,J.
va

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