

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD) NO.869 OF 2015
AND M.P.NO.1 OF 2015

1.Kannan
2.Ananthakumari ... Petitioners

Vs.

1.Maragathammal
2.Chinnaponnu
3.Srinivasan (Deceased)
4.Mariammal ... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 28.10.2014 passed in E.A.No.171 of 2014 in E.P.No.60 of 2014 in O.S.No.482 of 1982 by the Principal District Munsif, Thiruvannamalai.

For Petitioners : Mr.D.Govinda Reddy

ORDER

This Civil Revision Petition arises out of the order dated 28.10.2014 passed in E.A.No.171 of 2014 in E.P.No.60 of 2014 in O.S.No.482 of 1982 by the learned Principal District Munsif, Thiruvannamalai.

2.The respondents, who are wife and children of the 1st petitioner respectively had instituted the suit against the petitioners for partition claiming 3/4th share in the suit property. After contest, the trial Court passed a preliminary decree on 04.12.2001. Against the judgment and decree, the petitioners filed appeal in A.S.No.25 of 2002 and the same was dismissed on 11.12.2002. The concurrent finding was confirmed by this Court in Second Appeal No.654 of 2003 on 28.06.2012.

3.Thereupon, the plaintiffs filed an application in I.A.No.570 of 2012 for passing of final decree. The Trial Court, after perusing the report of the Advocate Commissioner, passed final decree on 13.02.2014. Based on the decree, the respondents filed R.E.P.No.60 of 2014 seeking delivery of possession. The Executing Court has ordered delivery of possession on 02.09.2014 and the decree holders have taken possession on 06.09.2014.

4.The petitioners filed R.E.A.No.171 of 2014 to set aside the exparte order passed in the execution petition alleging that on 19.08.2014 the first petitioner had diarrhea and he was taking nature treatment and that on that day the advocates were on boycott. It is further stated that the petitioners have filed an appeal against the final decree and the same was pending. The application was resisted by the respondents. The Executing Court, dismissed the application on 28.10.2014. Aggrieved by the order, the present Civil Revision Petition is filed.

5.Heard Mr.D.Govinda Reddy, learned counsel for the petitioners and perused the materials available on record.

6.The learned counsel for the petitioners submitted that the Trial Court has passed final decree on the basis of the exparte decree passed on 11.08.1997 in O.S.No.482 of 1982. Originally, the plaintiffs claimed share in 11 items of the suit property and subsequently, filed an application to include 26 items in the suit property. The order was set aside by this Court. Despite the same, the Trial Court has passed final decree in respect of 26 items, which is in flagrant violation of law. It is further contended that when the appeal is pending, the Executing Court ought not to have ordered delivery of possession.

7.The petitioners have filed the petition on the ground that the first petitioner had diarrhea on 19.08.2014. But, he has not produced any material to substantiate his case. The Executing Court has observed that the plaintiffs who are wife and children of the first petitioner instituted the suit in the year 1982 and even after lapse of 37 years, they were not able to enjoy the fruits of the decree. It is further observed by the Executing Court that the plaintiffs have already taken possession on 06.09.2014 and there is no stay in the appeal filed by the petitioners. Hence, I do not find any illegality or irregularity in the order impugned in this Civil Revision Petition.

8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.02.2015

Index : Yes/No
Internet : Yes/No
TK
To

The Principal District Munsif
Thiruvannamalai.

K.KALYANASUNDARAM, J.

TK

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