

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM :

THE HONOURABLE Ms.Justice K.B.K.VASUKI

C.R.P.No.4075 of 2009
and CMP.No.1 of 2009

1.Ezhumalai
2.Nagalakshmi

... Petitioners/Petitioners

Vs.

1.Anjali
2.Ramar
3.Lakshmanan
4.Murugan
5.Seetha

... Respondents/Defendant

Prayer: Petition filed under Section 115 of the CPC against the fair and decreetal order dated 28.07.2009 made in EP.No.186 of 2003 in OS.No.782 of 1984 on the file of the Principal District Munsif, Ulundurpettai.

For Petitioners : Mr.K.Venkatta Subban
For Respondents : No appearance.

O R D E R

Heard the learned counsel for the petitioners. No representation on behalf of the respondents either in person or through the learned counsel on record for more than one hearing.

2.The civil revision petition is filed against the order made in EP.No.186 of 2003 in OS.No.782 of 1984. The suit is filed for recovery of Rs.2,29,621.50 towards mesne profits for the plaintiffs 127/378 share in the suit property.

3.The plaintiffs as per the decree dated 13.03.1991 made in OS.No.782 of 1984 are entitled to 103/378 + 24/378 shares totally 127/378 share in the suit properties. The mesne profits is directed to be determined independently under Order 20 Rule 12 CPC. Accordingly, the plaintiffs filed IA.No.1206 of 2000 for determining mesne profits. The trial Court, after hearing both sides appointed Advocate Commissioner to hold mesne profits enquiry and the Commissioner after duly executing the warrant, filed his report. The trial Court accepted the Advocate Commissioner's report and granted decree for Rs.2,22,621.50 towards plaintiffs share mesne profit + Rs.5,538/- towards cost. Thereafter, the petitioners filed EP.No.186

of 2003 for executing the decree for recovery of mesne profits and the Execution petition was dismissed by the executing Court on the ground that the plaintiffs have not produced any evidence in support of the quantum of mesne profits fixed by the trial Court. Aggrieved against the same, the plaintiffs are now before this Court by way of present Civil Revision Petition.

4.The learned counsel for the petitioners has submitted that since decree for mesne profits is by the Court having jurisdiction, the Executing Court ought to have executed the decree as it stands and it cannot go into the correctness or validity of the decree, except where it is a nullity. The learned counsel for the petitioner has in support of his contention raised herein cited two judgments of our High Court reported in (i)AIR 1987 Mad 124 - Ganapathi and another V. Balasubramania Gounder and (ii)(2010) 5 MLJ 382 - Ramachandran V. Sankaraiah Naidu.

5.In both the cases, cited on the side of the petitioners the learned brother judges of this Court have categorically held that the Executing Court is bound to execute the decree as it stands. That being so, the Executing Court has committed serious error in going into the merits of the case and set aside the findings of other Court on merits, as if it is the appellate Court and the Executing Court has failed to take note of the fact that the Executing Court as appellate authority cannot sit over the findings of the trial Court, but it is bound to execute the decree as it stands and the failure to do so resulted in serious irregularity, warranting interference by this Court.

6.In the result, the civil revision petition is allowed by setting aside the Order made in EP.No.186 of 2003 in OS.No.782 of 1984. The Executing Court is directed to dispose of the EP in accordance with law, after giving due opportunity to both the parties as expeditiously as possible and also in the light of the observation of this Court. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

Sd/-

Asst.Registrar(CSIII)

/true copy/

Sub Asst. Registrar

To
The Principal District Munsif, Ulundurpettai.
+1 cc to M/s.Sarvabhauman, Associates sr.20552

C.R.P.No.4075 of 2009

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