

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2511 of 2015
and M.P.Nos.1 & 2 of 2015

1.Rajeswari

2.Revathi

3.Vanaja

4.Gowri

5.Geetha

6.M.Krishnakumar

7.S.Prema

... Petitioners

Vs.

1.Rangammal

2,M.Chandra Sekaran

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 11.06.2015 made in unnumbered E.A.No. of 2015 in E.P.No.71 of 2005 in O.S.No.282 of 1996 on the file of the Subordinate Judge, the Nilgiris, Ootacamund.

For Petitioners : Ms.P.T.Asha
for M/s.Sarvabhauman Associates

For Respondents : Mr.S.Ramasamy

ORDER

Challenging the order passed in an unnumbered E.A.No. of 2015 in E.P.No.71 of 2005 in O.S.No.282 of 1996 on the file of the Subordinate Judge, the Nilgiris, Ootacamund, the Judgment Debtors have filed the above Civil Revision Petition.

2.The respondents/plaintiffs filed the suit in O.S.No.282 of 1996 for recovery of possession and for past and future damages. Since the defendants remained absent, the trial Court passed an exparte decree in O.S.No.282 of 1996 on 21.07.1997. The application filed by the defendants to condone the delay in filing the petition to set aside the exparte decree was dismissed by the trial Court, which was also confirmed by this Court as well as by the Hon'ble Supreme Court in the Special Leave Petition. Pursuant to the decree passed in O.S.No.282 of 1996, the respondents filed an Execution Petition in E.P.No.71 of 2005.

3.It is pertinent to note that the plaintiffs have filed the suit in O.S.No.282 of 1996 in respect of the Door No.147. The suit was also decreed only in respect of the Door No.147. In the Execution Petition filed by the

respondents/plaintiffs, the defendants took out an unnumbered application in E.A.No. of 2015 in E.P.No.71 of 2005 under Section 47 of the Civil Procedure Code. The prayer sought for in the Section 47 application reads as follows:

“The petitioners therefore pray that this Honourable Court may be pleased to decide and determine whether delivery of the premises bearing Door No.148 will result in excessive execution which by reason of the grounds elaborated above will be the consequence; decide whether the decree is a nullity on account of it having been mechanically passed without adverting to merits and whether consideration has passed in the execution of the sale deeds under document numbers.460/1986, 461/1986, 477/1986 and 612/1986 registered in the office of the Joint Sub Registrar 1 of Udthagamandalam and on those grounds urged dismiss the execution petition and render justice.”

From the prayer sought for in the Section 47 application it is clear that the defendants seek to decide and determine whether delivery of premises bearing Door No.148 will result in excessive execution. When Door No.148 is not the subject matter of the suit in O.S.No.282 of 1996, the filing of the application by the defendants under Section 47 of the Civil Procedure Code in respect of Door No.148 is beyond the scope of the suit and the decree passed in O.S.No.282 of 1996. As rightly observed by the Execution Court,

the defendants are trying to introduce a new cause of action in the Section 47 application. Since the defendants are introducing a new cause of action, the Execution Court has rightly rejected the application as not maintainable.

4. 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. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
va

07.01.2016

To

The Subordinate Judge,
The Nilgiris,
Ootacamund.

M.DURAIWAMY,J.
va

**C.R.P.(NPD).No.2511 of 2015
and M.P.Nos.1 & 2 of 2015**

07.01.2016