

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2016
Coram

The Hon'ble Mr.Justice M.DURAIWAMY

CRP(NPD)No.2686 of 2015
and M.P.No.1 of 2015

1.Kathiravan
2. Karthikeyan

...Petitioners

Vs

1. Marappan
2. Mohanasundaram
3. Subbrayan

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 11.02.2015 made in R.E.A.No.158 of 2014 in R.E.A. No.21 of 2014 in R.E.P.No.15 of 2008 in O.S.No.182 of 2006 on the file of the District Munsif cum Judicial Magistrate, Paramathi, Namakkal District.

For Petitioners : Mr.M.Saravanakumar
For Respondents : Mr.N.Manokaran (R2)
No appearance for R1 & 3

ORDER

Challenging the order dated 11.02.2015 passed in R.E.A.No.158 of 2014 in R.E.A. No.21 of 2014 in R.E.P.No.15 of 2008 in O.S.No.182 of 2006 on the file of the District Munsif cum Judicial Magistrate, Paramathi, the third party petitioners have filed the above Civil Revision Petition.

2. Pursuant to the decree passed in O.S.No.182 of 2006, the 2nd respondent filed an Execution Petition in R.E.P.No.15 of 2008. In the said Execution Petition, the revision petitioners filed applications in R.E.A.Nos.20 and 21 of 2014 to stop giving possession to the 2nd respondent and also to cancel the Court auction held on 12.11.2003. The 2nd respondent filed his counter and was contesting both the applications. While so, when the applications were posted for hearing on 10.11.2014, since the revision petitioners failed to appear before the Executing Court, both the applications were dismissed for default. Thereafter, the revision petitioners filed applications in R.E.A.Nos.157 and 158 of 2014 to restore the applications in R.E.A.Nos.20 and 21 of 2014. In the affidavit filed in support of the applications, the petitioners have stated that the 1st petitioner was suffering from illness and therefore, he could not appear before the Executing Court and prosecute the applications in R.E.A.Nos.20 and 21 of 2014. The averments stated in the affidavit filed in support of the applications were disputed by the 2nd respondent in his counter. The Executing Court, taking into consideration the case of both parties, dismissed both the applications by separate orders on 11.02.2015. However, the revision petitioners have challenged only the order passed in R.E.A.No.158 of 2014 and has not challenged the order passed in R.E.A.No.157 of 2014.

3. The applications to restore R.E.A.No.21 of 2014 was filed on 26.11.2014. Since the 1st petitioner has stated that due to his illness, he could not appear before the Executing Court on 10.11.2014, I am of the view that the petitioners can be given an opportunity to prosecute the application in R.E.A.No.21 of 2014 on merits. The Executing Court, while dismissing the applications has rightly considered the merits of the applications in R.E.A.Nos.20 and 21 of 2014. Both the applications were filed by the sons of the 1st respondent challenging the auction held in the year 2003. Though the findings of the Executing Court cannot be dealt to be incorrect, I am of the view that in the interest of justice, the petitioners can be given an opportunity to prosecute the application in R.E.A.No.21 of 2014.

4. In these circumstances, the order passed in R.E.A.No.158 of 2014 in R.E.A.No.21 of 2014 in R.E.P.No.15 of 2008 is set aside and the application in R.E.A.No.158 of 2014 stands allowed. The District Munsif cum Judicial Magistrate, Paramathi is directed to dispose of the application in R.E.A.No.21 of 2014 on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order.

5. The learned counsel for the petitioners submitted that the Execution Petition is posted for hearing on 06.09.2016 and that the revision petitioners would appear on that day and make their submissions in R.E.A.No.21 of 2014. Mr.N.Manokaran, learned counsel appearing for the 2nd respondent also submitted that the 2nd respondent will also make his submissions before the Executing Court on 06.09.2016.

6. In view of the submissions made by the learned counsel on either side, the parties are directed to appear before the District Munsif cum Judicial Magistrate, Paramathi on 06.09.2016 and make their submissions in R.E.A.No.21 of 2014. The Executing Court is directed to decide the application on merits and in accordance with law, within the time stipulated above.

With these observations, the Civil Revision Petition stands allowed.
No costs. Connected miscellaneous petition is closed.

29.08.2016

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Note: Issue on 31.08.2016

To

The District Munsif cum
Judicial Magistrate,
Paramthi, Namakkal District.

M.DURAIWAMY,J

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