

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P (NPD) No.1114 of 2016

1. Nirmala
2. V. Sujatha
3. Krishnamurthy Petitioners

vs

1. R. Rani
2. R. Rajendran
3. R. Krishnan
4. V. Jamuna
5. G. Devaki
6. R. Rukmanathan Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the decretal and fair order made in EASR No.172 of 2016 in EP No.124 of 2014 in O.S.No.47 of 1998 passed by the Subordinate Judge, Kancheepuram dated 16.2.2016 in rejecting the application duly taken out under Section 47 of the CPC challenging the maintainability of the execution petition in EP No.124 of 2014.

For petitioner : Mr.D. Ashok Kumar

For R.1 to R.6 : Mr.N.R. Anantha Ramakrishnan

ORDER

Challenging the Order passed by the Sub Court, Kancheepuram in E.A.S.R.No.172/2016 in E.P.No.124/2014 in O.S.No.47/1998, the Judgment Debtors have filed the above civil revision petition.

2. Pursuant to the decree passed in the Suit in O.S.No.47/1998, the Decree Holders filed an Execution Petition in E.P.No.124/2014. It is brought to the notice of this Court that the decree holders filed a Suit in O.S.No.47/1998 on the file of Sub Court, Poonamalee for recovery of possession. After contest, the suit was dismissed by the trial Court and on the appeal, preferred by the plaintiff in A.S.No.49/2001 on the file of Principal District Court, Chenglepet, the judgment and decree, passed by the trial court, were reversed, against which, the defendant preferred a Second Appeal in S.A.No.1379/2002, which was also dismissed by this court on 26.07.2011. Aggrieved over the same, the defendant preferred the appeal before the Hon'ble Supreme Court of India, which was also dismissed by the Apex Court on 06.01.2012. Thereafter, the decree holders filed an Execution Petition in E.P.No.124/2014. In the said Execution Petition, the judgments debtors filed unnumbered

application in EASR No.172/2016 under Section 47 of the Civil Procedure Code.

3. Though, in the petition, it has been mentioned as Sec.47 of the Civil Procedure Code, on a reading of the prayer, sought for in the petition, it could be seen that the defendants have sought for stay of the execution petition.

4. The learned counsel appearing for the petitioner submitted that in the prayer portion, though it has been prayed for stay of the execution proceedings, the judgment debtors have filed the application only under Sec.47 of the Civil Procedure Code.

5. The Executing Court, taking note of the background of the case, rejected the petition. Now, the contentions raised by the petitioner is that the Executing Court could have numbered the application, filed under Section 47 of the Civil Procedure Code and thereafter, disposed of the application.

6. Since it is a settled position that the application should be disposed of only after numbering, I am of the view that the impugned

order is liable to be set aside only on this ground. Accordingly, the impugned order dated 16.2.2016 passed in EASR No.172/2016 is set aside.

7. The Sub Court, Kancheepuram is directed to number the application in EASR No.172/2016 and dispose of the same, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. The respondents/decreed holders are directed to file their counter within one week from the date of receipt of a copy of this order. With these observations, the Civil Revision Petition is allowed. No costs.

04-08-2016

sr

Index:no
website:yes

Note: Issue order copy on 05.08.2016

To

1. The Principal District Court, Chenglepet
2. The Subordinate Court, Poonamalle
3. The Subordinate Court, Kancheepuram

M. DURAISWAMY,J.,

sr

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