

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.1315 of 2016
and
CMP No.7387 of 2016

1. Mrs.J. Daisy Mani
2. Dinesh
3.Mrs.M. Kokila
4.J. Suresh
5.Gadis
6.Ragland
7.T. Immanuel
8.E. Steevanson
9.E. Praveenson
10.P. Sadrack

.... Petitioners

vs

1. Mrs.Rajammal
2.Mrs.Santhi Bai
3.Dhanasekaran
4.Rajasekaran
5.MRs.Helan Sheeba
6.John Wesley
7.B. Kapaleeswaran
8.B. Jagadeesan
9.B. Janeswaran
10.B. Thiageswaran
11.Tmt.B. Sasikala
12.Tmt.B. Sharmila

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the E.A.S.R.No.10563 of 2016 in E.P.No.1793 of 2008 in O.S.No.1495 of 2000 dated 07.03.2016 on the file of IX Assistant City Civil Court, Chennai.

For Petitioners : Mr.M. Vivekanandan
For R.2 to R.4 : Mr.N.R. Anantha Ramakrishnan
For R.1, R.5 to
R.12 : No appearance

ORDER

Challenging the Docket Order made in E.A.S.R.No.10563 of 2016 in E.P.No.1793 of 2008 in O.S.No.1495 of 2000 dated 07.03.2016 on the file of IX Assistant City Civil Court, Chennai, the third party obstructors have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.1495 of 2000 for partition, separate possession and for permanent injunction. The trial Court passed a preliminary decree and subsequently, final decree was also passed in the suit in O.S.No.1495 of 2000.

3. Pursuant to the final decree passed in O.S.No.1495 of 2000, the plaintiffs have filed an Execution Petition in E.P.No.1793 of 2008. The Executing Court ordered delivery and according to the learned counsel on either side, the plaintiffs/deGREE holders had taken possession of the suit property through Court on 04.03.2016.

4. The learned counsel, appearing for the revision petitioner, submitted that the petitioners/third party obstructors have filed application

in E.A.S.R.No.10563 of 2016 under Order 21 Rule 97 of the Civil Procedure Code on 01.03.2016 and the Executing Court, without considering the application, filed by them, have rejected the application stating that the plaintiffs have already taken possession of the property.

5. Admittedly, the application, filed under Order 21 Rule 97 of the Civil Procedure Code by the revision petitioners, was not numbered by the Executing Court.

6. The learned counsel appearing for the respondents/decreed holders submitted that the Executing Court ordered delivery on 01.02.2016 and the warrant was execution of the decree was entrusted to the bailiff on 09.02.2016 and therefore, the Executing Court had no occasion to deal with the application, filed Under Order 21 Rule 97 of the Civil Procedure Code, by the revision petitioners.

7. In any event, admittedly, the plaintiffs had taken possession of the property and the Execution Petition was also terminated by the Executing Court. The averments stated in the petition in E.A.S.R.No.10563 of 2016 narrate that the petitioners are in possession of the property. Now that, the

M. DURAISWAMY,J.,

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petitioners are out of possession, the remedy open to them is to file appropriate application as per the provisions of the Civil Procedure Code. In these circumstances, I do not find any reason to interfere with the order passed by the Executing Court. However, it is open to the revision petitioners to file appropriate application before the Executing Court under the provisions of the Civil Procedure Code and if an application is filed by the petitioners, the IX Assistant Judge, City Civil Court, Chennai is directed to decide the same on merits and in accordance with law. With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected CMP is closed.

22-11-2016

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Index:no
website:yes

To
The IX Assistant Judge, City Civil Court, Chennai

CRP(NPD) No.1315 of 2016

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