

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P.(NPD).No.181 of 2016
and C.M.P.Nos.918 & 919 of 2016

1.S.Vijayalakshmi

2.S.Murugadoss

3.S.Muthukumar

4.S.Devasena

5.Meeraselvi

... Petitioners

Vs.

Arulmigu Satanatha Swamy Thirukoil,
rep by its Executive Officer,
Nagapattinam

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order dated 27.07.2015 passed in E.A.No.11 of 2014 in E.P.No.61 of 2013 in O.S.No.268 of 1989 on the file of the District Munsif, Nagapattinam.

For Petitioner : Mr.V.Raghupathi

ORDER

Challenging the fair and final order passed in E.A.No.11 of 2014 in E.P.No.61 of 2013 in O.S.No.268 of 1989 on the file of the District Munsif,

Nagapattinam, the legal representatives of the deceased defendant have filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.268 of 1989 for recovery of possession.

3.After contest, the trial Court dismissed the suit on 24.03.1992. On appeal preferred by the plaintiff in A.S.No.69 of 1993, the Lower Appellate Court reversed the judgment and decree of the trial Court and decreed the suit. Aggrieved over the judgment and decree of the Lower Appellate Court, the defendant preferred a Second Appeal in S.A.No.1492 of 1994 before this Court and this Court, by judgment dated 11.11.2005, confirmed the judgment and decree of the Lower Appellate Court and dismissed the Second Appeal. Thereafter, the plaintiff filed an Execution Petition in E.P.No.61 of 2012 before the District Court, Nagapattinam. In the said Execution Petition, the legal representatives of the deceased defendant filed an application in E.A.No.11 of 2014 under Section 47 of the Civil Procedure Code wherein they have contended that after the dismissal of the Second Appeal, the petitioners continued to pay the rent to the plaintiff, which was also received by them without prejudice to their contentions. The only contention now raised before this Court is that the

plaintiff having received the monthly rent for a period of seven years are estopped from filing the Execution Petition. The said contention cannot be accepted for the reason that admittedly there is a decree passed against the defendant in the suit and the petitioners have stepped into the shoes of the defendant as the legal representatives of the deceased defendant. Therefore, the decree passed in O.S.No.268 of 1989 is binding on them. The Execution Court, taking into consideration all these aspects, rightly dismissed the petition.

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

27.01.2016

Note: The Registry is directed to return the original documents filed in C.M.P.No.919 of 2016 to the counsel for the petitioner.

To

The District Munsif,
Nagapattinam.

M.DURAIWAMY,J.

va

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