

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1828 of 2016 &

C.M.P.No.9605 of 2016

R.Prabhu

... Petitioner

v.

1.N.P.Srinivasan
2.Santhanalakshmi
3.D.Dhandapani

... Respondents

Civil Revision Petition filed under Section 115 of CPC seeking to strike off E.A.No.109 of 2015 in E.P.No.23 of 2006 in O.S.No.114 of 2005 on the file of Sub Court, Vellore.

For Petitioners : Mr.P.Chandrasekar_

ORDER

The plaintiff in O.S.No.114 of 2005 on the file of Sub Court, Vellore, has filed the above Civil Revision petition to strike off the application in E.A.No.109 of 2015 in E.P.No.23 of 2006.

2. Pursuant to the decree passed in O.S.No.114 of 2005, the revision petitioner-plaintiff, filed an Execution Petition in E.P.No.23 of 2006. In the said Execution Petition, the first defendant took out an application in E.A.No.109 of 2015, under sections 144 and 154 of Civil Procedure Code, seeking for re-delivery of the suit property.

3. Mr.P.Chandrasekar, learned counsel appearing for the petitioner submitted that as against the judgment and decree passed in O.S.No.114 of 2005, the plaintiff as well as the first defendant have filed appeals in A.S.Nos.12 of 2014 and 31 of 2014 respectively on the file of Principal District Court, Vellore. The learned counsel further submitted that since the decree passed in O.S.No.114 of 2005 has not reached finality, the application filed by the 1st defendant seeking for re-delivery of the property is liable to be struck off.

4. Though the contention raised by the learned counsel for the petitioner stating that the 1st defendant can seek for re-delivery of the property only after the dispute between the parties reaching finality, the revision petitioner-plaintiff can raise this point before the Executing Court by way of counter and make his submissions with regard to the same. Instead, the plaintiff has approached this court for striking off the application.

5. In these circumstances, I am of the considered view that the revision petitioner-plaintiff can file a counter before the Executing Court and put-forth all the defences available with him and contest the application.

6. Accordingly, I give liberty to the petitioner to file counter in E.A.No.109 of 2015 and the Subordinate Court, Vellore, is directed to consider the counter to be filed by the revision petitioner and dispose of the application in E.A.No.109 of 2015 taking into consideration the pendency of the first appeals before the Principal District Court, Vellore, within a period of two months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

22.06.2016

Rj

To

The Sub Court,
Vellore.

M. DURAISWAMY,J.,

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