

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.214 of 2016 &

C.M.P.No.1076 of 2016

1.V.Ethirajan
2.Yogambal
3.Preethy
4.Nirmala

... Petitioners

v.

1.S.M./Fazal Mohamad
2.Janeera

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to direct the X Assistant Judge, City Civil Court at Chennai to take the petition in E.A.SR.No.45976 of 2015 in E.P. No.1586 of 2010 in O.S. No.2815 of 2005 on file and proceed the same as per law.

For Petitioners : Mr.V.Lakshmi Narayanan
for Mr.M.Ganesan

For Caveators : Mr.K.V.Sundararajan

ORDER

Challenging the order passed in E.A.SR.No.45976 of 2015 in E.P. No.1586 of 2010 in O.S. No.2815 of 2005 on the file of X Assistant Judge, City Civil Court, Chennai, the judgment debtors have filed the above Civil Revision Petition.

2. The decree holders filed the suit in O.S.No.2815 of 2005 for recovery of possession.

3. Pursuant to the decree passed in O.S.No.2815 of 2005, dated 30.11.2009, the decree holders filed an Execution Petition in E.P.No.1586 of 2010.

4 . It is brought to the notice of this court that the appeal preferred by the defendants was also dismissed by the Lower Appellate Court. Thereafter, the judgment debtors took out an unnumbered application in E.A.SR. No.45976 of 2015 seeking for appointment of an Advocate Commissioner to measure the property, which is the subject matter in C.S.No.3 of 1996 ['A' schedule] on the file of this court and the property purchased by Saradammal under the sale deed dated 25.12.1985.

5. On a perusal of the decree passed in O.S.No.2815 of 2005, it is clear that Execution Petition has been filed by the decree holders in respect of the suit property in O.S.No.2815 of 2005. Therefore, there is no ambiguity in the schedule of property mentioned in the Execution Petition and in the decree passed in O.S.No.2815 of 2005. When there is a decree for recovery of possession in O.S.No.2815 of 2005, the Execution Court is bound to execute the decree and further it cannot go beyond the decree passed in the suit. The Execution Court taking into consideration all these aspects, rightly dismissed the application.

6. 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. The learned counsel for the caveators submitted that the Execution Petition is pending from 2010, therefore, the Execution Court may be directed to dispose of the Execution Petition in E.P.No.1586 of 2010, within a stipulated time. Having regard to the submissions made by the learned counsel for the caveators, I direct the X Assistant Judge, City Civil Court, Chennai, to dispose of the Execution Petition in E.P. No.1586 of 2010 in O.S. No.2815 of 2005 on merits and in accordance with law, 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 dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

29.01.2016

Rj

To

The X Assistant Judge,
City Civil Court,
Chennai

M. DURAISWAMY,J.,

Rj

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