

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P (NPD) No.2169 of 2016

Rani

..... Petitioner

vs

Vinayagam

..... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decretal order dated 27.3.2014 passed in E.P.No.112 of 2004 in O.S.No.518 of 1996 on the file of Additional District Munsif, Vaniyambadi, Vellore District.

For Petitioner : Mr.S. Subbiah

For respondent : Mr.S.R. Rajagopal for
Mr.G. Saibaba

ORDER

Challenging the order passed in E.P.No.112 of 2004 in O.S.No.518 of 1996, on the file of Additional District Munsif, Vaniyambadi, the Decree Holder has filed the above Civil Revision Petition.

2. The Revision Petitioner filed a Suit in O.S.No.518 of 1996

for declaration and permanent injunction. Since the defendant failed to appear before the trial court, the trial Court set him ex-parte and an ex-parte decree was passed on 10.02.2004.

3. Pursuant to the decree passed in O.S.No.518 of 1996, the plaintiff filed an Execution Petition in E.P.No.112 of 2004 stating that the respondent/judgment debtor had disobeyed the decree for permanent injunction. Subsequent to the decree passed in O.S.No.518 of 1996, the Revision Petitioner also filed a suit in O.S.No.299 of 2004 on the file of District Munsif Court, Vaniyambadi for recovery of possession.

4. Mr.S. Subbiah, learned counsel appearing for the Revision Petitioner, submitted that the suit in O.S.No.299 of 2004 was also decreed by the trial court on 26.09.2006. Before the Executing Court, an Advocate Commissioner was appointed and he has also filed his report along with a plan.

5. That apart, on the side of the plaintiff, two witnesses were examined, however, no document was marked. On the side of the respondent/defendant, R.W.1 was examined and 10 documents were

marked.

6. The learned counsel appearing for the respondent submitted that the dismissal of the Execution Petition, by the Executing Court, is just and proper, for the reason that the filing of the second suit, by the revision petitioner, would establish that the revision petitioner is not in possession of the property. Hence the learned counsel for the respondent submitted that the Civil Revision Petition, filed by the plaintiff, is liable to be rejected.

7. The Executing Court dismissed the Execution Petition in E.P.No.112 of 2004, without considering the oral and documentary evidences, let in by the parties.

8. On a reading of the Order, passed by the Executing Court, it could be seen that the Executing Court had only commented upon the conduct of the parties for keeping the execution petition for a long time. The Executing Court has not gone into the merits of the matter, while dismissing the execution petition.

9. The Additional District Munsif should have considered the

oral and documentary evidences, let in by the parties, and disposed of the Execution Petition, on merits and in accordance with law. Without going into the merits of the matter, the Executing Court had erroneously dismissed the petition, taking into consideration only the conduct of the parties.

10. It is a settled position that the Executing Court is bound by the decree passed by the trial Court. Since the Additional District Munsif, Vaniyambadi has not considered the oral and documentary evidences, let in by the parties, I am of the view that the impugned order, passed by the Additional District Munsif, Vaniyambadi, is liable to be set side and the matter should be remitted back to the Executing Court for fresh consideration.

11. Accordingly, the Order passed by the Executing Court in E.P.No.112 of 2004 is set aside and the matter is remanded to the Additional District Munsif, Vaniyambadi for fresh consideration. The Additional District Munsif, Vaniyambadi is directed to take into consideration the oral and documentary evidences, let in by the parties, and after hearing the learned counsel on either side, dispose of the Execution Petition, on merits and in accordance with law, within

a period of eight weeks from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed. No costs.

02-08-2016

sr

Index:no
website:yes

To

The District Munsif Court, Vaniyambadi

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M. DURAISWAMY,J.,

sr

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