

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2244 of 2016
and C.M.P.No.11643 of 2016

1.K.Ganapathy

2.K.Kannan

3.M.Mohan Raj

4.R.Selvaraj

5.A.Susairaj

... Petitioners

Vs.

K.Nanjan (Died)

K.Raju (Died)

1.K.Raman

2.K.Sekaran

3.M.Gowri

4.Ruckmani @ Ruckmaniammal

5.N.Sivaraj

6.N.Thangaraj

7.N.Sureshkumar

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order and decretal order dated 28.03.2016 made in C.M.A.No.6 of 2016 on the file of the Subordinate Judge, The Nilgiris

confirming the order and decreetal order dated 16.04.2015 in E.A.No.7 of 2015 in E.P.R.No.164 of 1984 on the file of the District Munsif, Coonoor at Nilgiris.

For Petitioner : Mrs.AL.Ganthimathi

For Respondents : Mr.N.Damodaran (caveator - R5 to 7)

ORDER

Challenging the judgment and decree passed in C.M.A.No.6 of 2016 on the file of the Subordinate Judge, The Nilgiris, at Udthagamandalam, confirming the order and decreetal order dated 16.04.2015 in E.A.No.7 of 2015 in E.P.R.No.164 of 1984 on the file of the District Munsif, Coonoor at Nilgiris, the claimants have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.32 of 1963 for declaration and for recovery of possession.

3.The trial Court decreed the suit on 31.03.1966, which was also confirmed on Appeal by the District Court, Coimbatore on 18.11.1987 and by this Court, by its judgment dated 24.03.1972. Even after a lapse of more than five decades, the plaintiffs are not in a position to execute the decree granted in O.S.No.32 of 1963.

4.Pursuant to the decree passed in O.S.No.32 of 1963, the plaintiffs

filed an Execution Petition in E.P.R.No.164 of 1984 for taking delivery of possession. In the said Execution Petition, earlier, one Sathyamoorthy, along with other Obstructors, filed an application in E.A.No.6 of 2015. The Executing Court rejected the claim made by the said Sathyamoorthy and dismissed the petition. While dismissing the petition, the Executing Court observed that the issues raised by the claimants in E.A.No.6 of 2015 were already decided in O.S.No.32 of 63. The Decree Holders have also filed an application in E.A.No.207 of 1985 for removal of Obstructors, which was also allowed by the Executing Court on 12.12.2014. The application filed by the present petitioners, after the disposal of E.A.No.6 of 2015 and E.A.No.207 of 1985 under Order 21 Rule 97 of the Code of Civil Procedure stating that they were the original tenants of Soundirammal was rightly rejected by the Executing Court as well as by the Lower Appellate Court stating that the Executing Court had already passed orders against the said Soundirammal for taking possession of the property and therefore, the present petitioners cannot derive a right better than the landlord viz., Soundirammal.

5.The conduct of the parties would clearly establish that the present petition has been filed only to drag on the matter for an indefinite period. When the suit is pending from 1963 and the decree was obtained in the year 1966, even after a lapse of 50 years, the plaintiffs are not in a position to

enjoy the fruits of the decree. The Courts below rightly dismissed the petition stating that the issues raised in the present petition were already decided in the suit as well as in the applications filed in the Execution Petition. In the absence of any evidence produced before the trial Court in support of the claim made by the petitioners, the Courts below have concurrently dismissed the application.

6.I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

7.The District Munsif, Coonor is directed to dispose of the Execution Petition in E.P.R.No.164 of 1984 within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

04.08.2016

To

1.The Subordinate Judge,
The Nilgiris,
Udhagamandalam.

2.The District Munsif,
Coonoor,
Nilgiris.

M.DURAIWAMY,J.
va

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