

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2642 of 2016
and C.M.P.No.13590 of 2016

1.Antonyammal

2.L.M.Lawrence

... Petitioners

Vs.

1.Regina Duraisamy

2.Sheela Vincent

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 15.07.2016 made in E.A.No.39 of 2016 in E.P.No.18 of 2014 on the file of the I Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.C.R.Prasanan

For Respondents : Mr.S.Mukunth
for Mr.R.Ganesh Babu

ORDER

Heard both sides.

2.Challenging the order passed in E.A.No.39 of 2016 in E.P.No.18 of 2014 on the file of the I Additional District Munsif Court, Coimbatore in O.S.No.936 of 1977 on the file of the Subordinate Court, Coimbatore, the

Judgment Debtors 2 & 7 have filed the above Civil Revision Petition.

2.Pursuant to the decree passed in O.S.No.936 of 1977, the Decree Holders filed the Execution Petition in E.P.No.18 of 2014. In the said Execution Petition, the 2nd petitioner herein filed an application in E.A.No.39 of 2016 seeking for appointment of Advocate Commissioner for the purpose of examining the 2nd petitioner at his residence, since he was suffering from ailment. The Executing Court allowed the application for the reason that the Decree Holders did not have objection for appointing an Advocate Commissioner. Subsequently, the Advocate Commissioner, who was appointed to examine the 2nd petitioner, filed a memo before the Executing Court stating that he was not in a position to proceed with the Commission due to boycott of Advocates, therefore, he was not in a position to attend and proceed with the matter.

3.The Executing Court, by order dated 12.07.2016, rejected the plea of the Advocate Commissioner and found that the 2nd petitioner is capable to stand as witness before the Court and ultimately, dismissed the petition. Aggrieved over this order, the Judgment Debtors 2 & 7 have filed the Civil Revision Petition.

4. When the Executing Court had allowed the application in E.A.No.39 of 2016 and appointed an Advocate Commissioner for the purpose of examining the 2nd petitioner for the reason that he was unwell, was erroneously dismissed by the Executing Court, inspite of the memo filed by the Advocate Commissioner seeking for extension of time.

5. On a perusal of the memo filed by the Advocate Commissioner, it is clear that the parties cannot be blamed for not completing the cross examination in time. Time was sought only by the Advocate Commissioner and in such circumstances, the Executing Court should have granted time to the Advocate Commissioner to complete the cross examination. In these circumstances, I am of the considered view that the order dated 12.07.2016 passed by the I Additional District Munsif Court, Coimbatore is liable to be set aside and the Commissioner should be directed to proceed with the cross examination of the 2nd petitioner. In these circumstances, the order dated 12.07.2016 passed in E.A.No.39 of 2016 in E.P.No.18 of 2014 stands set aside.

6. The I Additional District Munsif, Coimbatore is directed to give a direction to the Advocate Commissioner to complete the cross examination within two weeks from the date of receipt of the copy of the order. The

parties are directed to co-operate and complete the process of cross examination of the 2nd petitioner within two weeks from the date of receipt of the copy of the order.

7.The learned counsel appearing for the petitioners submitted that the revision petitioners have also filed an application under Section 47 of the Civil Procedure Code in E.A.No.105 of 2015, which is also pending before the Executing Court.

8.It is pertinent to note that this Court, by order dated 18.11.2015 in C.R.P.(NPD).No.1480 of 2015, had already directed the I Additional District Munsif Court, Coimbatore to dispose of the Execution Petition in E.P.No.18 of 2014 within a period of three months. Subsequently, in C.R.P.(NPD).No.1593 of 2016, by order dated 16.06.2016, this Court, again directed the Executing Court to dispose of the Execution Petition within three months. Insite of all these orders, the Execution Petition is kept pending.

9.In these circumstances, I direct the I Additional District Munsif, Coimbatore to dispose of the application in E.A.No.105 of 2015 in E.P.No.18 of 2014 within fifteen days from the date of completion of cross examination of the 2nd petitioner and also dispose of the Execution Petition

in E.P.No.18 of 2014 within one month from the date of disposal of the Section 47 application.

10.The learned counsel appearing for the petitioners further submitted that the revision petitioners have also filed an application raising the issue with regard to maintainability of the Execution Petition, which is also pending before the Executing Court.

11.The Executing Court is directed to dispose of all the applications, excluding under Section 47 application, along with the Execution Petition in E.P.No.18 of 2014, within one month from the date of disposal of Section 47 application.

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

Index : No

Internet : Yes

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Note: Issue order copy on 29.08.2016.

26.08.2016

M.DURAI SWAMY, J.

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To

The I Additional District Munsif Court,
Coimbatore.

**C.R.P.(NPD).No.2642 of 2016
and C.M.P.No.13590 of 2016**

26.08.2016