

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2855 of 2016

D.Suseela

... Petitioner

Vs

1.K.K.Thirumalai

2.K.Kathiravan

... Respondents

Civil Revision Petition under section 115 of Civil Procedure Code against the Fair and Decreetal order dated 18.09.2015 made in E.P. No.182 of 2013 in O.S.No.503 of 2005 on the file of District Munsif Court, Ambattur.

For Petitioner : Mr.K.Balamurali
for M/s.Shivakumar and Suresh

ORDER

Challenging the fair and final order passed in E.P.No.182 of 2013 in O.S. No.503 of 2005 on the file of District Munsif Court, Ambattur. The 4th defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.503 of 2005 for permanent injunction and mandatory injunction.

3. In the said suit, the 4th defendant filed an application under Section 94 (e) of the Civil Procedure Code in I.A.No.1187 of 2010 in O.S.No.503 of 2005 to direct the defendants 1 and 2 to hand over the physical possession of the flat premises in the first floor described in the petition, after removing the structure erected there on. The application filed by the 4th defendant was contested by the parties. The trial Court, elaborately narrated the averments stated in the affidavit and the counter and also recorded the submissions made by the respondent in the order and ultimately, allowed the application without any discussion. The order passed by the trial Court is virtually a single word order without discussion.

4. Pursuant to the order passed by the trial Court, the 4th defendant filed an Execution Petition in E.P.No.182 of 2013 for delivery of possession. The Execution Petition filed by the 4th defendant was opposed by the 1st defendant. The Executing Court, taking into consideration the case of both parties, dismissed the Execution Petition finding that the 4th defendant cannot file the Execution Petition based on the order in I.A.No.1187 of 2010 in O.S.No.503 of 2005 passed by the trial Court, when the Original Suit is pending before the trial Court.

5. On a perusal of the order passed by the trial Court, it is clear that it is only a non-speaking order passed by the trial Court. Admittedly the 4th defendant has not filed any suit for recovery of possession from the defendants 1 and 2. The Executing Court considered all these aspects and rightly dismissed the Execution Petition. I do not find an error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition stands dismissed.

6. The learned counsel for the petitioner submitted that the 4th defendant may be given liberty to work out her remedy in accordance with law.

7. In view of the submissions made by the learned counsel for the petitioner/4th defendant, it is open to the petitioner to work out her remedy in accordance with law. No costs.

M.DURAIWAMY,J.
va

To
The District Munsif,
Ambattur.

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