

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.3400 of 2016
and CMP No.17275 of 2016

G. Shanthi

... Petitioner

vs

R.Pannerselvam

.... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 08.11.2015 passed in E.A No.3659/2013 in E.P.No.3933 of 2011 in O.S.No.14100 of 1996 by IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Mahendra Kumar

ORDER

Challenging the fair and final order passed in E.A No.3659 of 2013 in E.P.No.3933 of 2011 in O.S.No.14100 of 1996 on the file of IX Judge, City Civil Court, Chennai, the Judgment Debtor has filed the above Civil Revision Petition.

2. The respondent/plaintiff filed the suit in O.S.No.14100 of 1996 on the file of IX Judge, City Civil Court, Chennai for recovery of possession. After contest, the trial Court decreed the suit on 11.04.2005, against which, the defendant preferred an appeal in A.S.No.16 of 2006 and the same was also dismissed by the lower Appellate Court on 08.03.2010. Since the defendant has not challenged the judgment and decree passed by the Courts below, the same has become final.

3. Thereafter, in the year 2011, the decree holder filed an Execution Petition in E.P.No.3933 of 2011. The judgment debtor filed her counter in the Execution Petition. Subsequently, in the year 2013, the judgment debtor filed an application under Sec.47 of the Civil Procedure Code in E.A.No.3659 of 2013 to dismiss the Execution Petition as not executable.

4. The learned counsel appearing for the petitioner submitted that since the Central Government have acquired land, measuring an extent of 1001 sq.ft, the respondent/decreed holder cannot execute the decree as against the judgment debtor.

5. The suit property measures an extent of 2400 sq.ft in S.No.141/5. Before the Executing Court, in the application filed under Sec.47 of the Civil Procedure Code, the defendant has set up a new case, contrary to the stand taken by her in the written statement before the trial Court. For the first time, the defendant had raised new issues, which were not raised before the Courts below. Taking note of this fact, the Executing Court had dismissed the application. In the case of Central Government, acquiring lands under the National Highways Act, they would have filed appropriate application before the Executing Court to put forth their case. The judgment debtor cannot step into the shoes of the Central Government and defend their case.

6. When there is valid decree passed in O.S.No.14100 of 1996, which was also confirmed by the lower appellate court, the Executing Court is bound by the decree passed in the Suit. The decree passed by the trial Court should not remain as paper decree. Though the suit was filed in the year 1996, the plaintiff has not taken possession of the same, even after a lapse of twenty years.

7. On a reading of the averments stated in the application,

filed under Sec.47 of the Civil Procedure Code, it is clear that the

M. DURAISWAMY,J.,

sr

judgment debtor has filed the application only to prolong the matter for an indefinite period. Taking note of all these aspects, the Executing Court has rightly dismissed the petition. 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 the same is dismissed. No costs. Consequently, connected CMP is closed.

09-11-2016

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Index:yes/no
website:yes

To

The IX Assistant Judge, City Civil Court,

CRP(NPD)No.3400 of 2016

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