

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.380 of 2016

and

CMP.No.2058 of 2016

1.Dhayalan
2.Thilotham

.. Petitioners

Vs

1.T.R.Rajagopal Naidu
2.A.Janaki Raman
3.Sakkubai
4.Guna Bai
5.N.Nagarajan
6.Uma Rani
7.Usha Rani

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the order and decree dated 26.10.2015 made in E.A.No.63 of 2015 in E.P.No.308 of 1999 in O.S.No.445 of 1981 on the file of the Additional District Munsif, Vellore, Vellore District, by allowing the present Civil Revision Petition.

For Petitioners	: Mr.A.Gouthaman
For Respondents	: Ms.R.Anitha

ORDER

The judgment debtors, as petitioners herein, has filed this Civil Revision Petition, challenging the order dated 26.10.2015

passed by the Executing Court in E.A.No.63 of 2015 in E.P.No.308 of 1999 in O.S.No.445 of 1981 on the file of the Additional District Munsif, Vellore, Vellore District.

2. The Execution Application in E.A.No.63 of 2015 has been filed by the decree holder/plaintiff seeking to re-open the execution proceedings dated 11.02.2014 and to order possession of the suit property to the decree holder. That application was allowed. Challenging the same, this Civil Revision Petition has been filed.

3. According to the learned counsel for the decree holder, the Execution Petition in E.P.No.308 of 1999 was filed by the decree holder, both for execution of the sale deed and for delivery of the possession of the scheduled property, but the Executing Court ordered only execution of sale deed and without ordering delivery of possession, has closed the Execution Petition on 11.10.2014.

4. Therefore, for revival of the execution proceedings and to set aside the order dated 11.10.2014, passed in Execution Petition, and for delivery of possession, the decree holder has filed an Execution Application in E.A.No.63 of 2015 on the file of Additional District Munsif, Vellore and the same was allowed by the

Executing Court on 26.10.2015. Challenging the same, the judgment debtors have preferred this Civil Revision Petition.

5. The learned counsel for the judgment debtors submitted that E.A.No.63 of 2015 filed by the decree holder is barred by limitation and said execution petition ought not to have been entertained by the Executing Court.

5.1.This contention cannot be accepted for more reasons than one :

a. Already in the execution petition itself, the decree holder has sought for delivery of the possession also. The Court omitted to order delivery, while ordering execution of sale deed.

b. The second appeal filed by the judgment debtors have already been dismissed. Therefore, there is no valid ground for the judgment debtors to oppose the delivery of possession.

c. The decree in the Second Appeal has been passed on 15.06.1998. The Execution Petition has been filed in the year 1999 in E.P.No.308 of 1999. Therefore the contention that the Execution Petition is barred by limitation, is not correct.

5. Under such circumstances, this revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2016

ds

To:

The Additional District Munsif,
Vellore,
Vellore District.

S.VIMALA,J

ds

CRP (NPD) No.380 of 2016

06.04.2016