

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.53 of 2016&

C.M.P.No.266 of 2016

Mrs.Litvina Rajamanickam

... Petitioner

v.

1.Stella santhini

Xavier (died)

2.X.Herald

3.X.Harie Edward

4.D.Regina

5.X.Rosy

6.X.Amalorpanthan

7.Sisilee

8.M.Gowri

9.A.Devaki

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 16.10.2015 rejecting E.A.S.R.No.20126 of 2015 in E.P.No.142 of 2011 filed under section 47 CPC challenging maintainability of E.P.142 of 2011 on the file of learned XVI Small Causes Judge, Chennai and allow the said application with costs.

For Petitioner : Mr.Senthil Kumaran

ORDER

Challenging the order passed in E.A.S.R.No.20126 of 2015 in E.P.No.142 of 2011 on the file of XVI Judge, Court of Small Causes, Chennai the obstructor has filed the above Civil Revision Petition.

2. Pursuant to the order of eviction granted in R.C.O.P.No.1594 of 1996 on the file of XVI Judge, Court of Small Causes, Chennai, the landlord filed an Execution Petition in E.P.No.142 of 2011.

3. Since the revision petitioner obstructed at the time of taking delivery by the bailiff, the landlord filed an application in E.A.No.1 of 2012 in E.P.No.142 of 2011 under Order 21, Rule 97 of CPC for removal of obstructions.

4. After contest, the Execution Court allowed the application. Thereafter, the obstructor filed an application in E.A.S.R.No.20126 of 2015 under section 47 of CPC. The said application filed by the obstructor was rejected by the Execution Court as not maintainable. Aggrieved over the said order, the obstructor has filed the above Civil Revision Petition.

5. As per section 47 of CPC, an application can be filed only by the

parties to the proceedings and not by a third party. In the case on hand, in spite of the application filed under Order 21, Rule 97 of CPC in E.A.No.1 of 2012 was allowed by the Execution Court, after the disposal of the said application, the obstructor has filed the application under section 47 of CPC. Hence, the application filed under section 47 of CPC by the obstructor-third party is not maintainable. In view of the same, the Execution Court has rightly rejected the application as not maintainable.

6. In these circumstances, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

11.01.2016

Rj

To

The XVI Judge,
Court of Small Causes,
Chennai

M. DURAISWAMY,J.,

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