

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.549 of 2016
and C.M.P.No.2767 of 2016

1.S.Ganamani
W/o.Late A.Shanmugasundaram
No.24, Ramakrishna Nagar,
Uthkkadu Road, Pollachi Taluk.

2.Premalatha
W/o.Balasubramaniam
No.24, Ramakrishna Nagar,
Uthkkadu Road, Pollachi Taluk.

3.S.Jayakumar
S/o. Late A.Shanmugasundaram
No.24, Ramakrishna Nagar,
Uthkkadu Road, Pollachi Taluk.

4.S.Rathnasamy
S/o.Late A.Shanmugasundaram
No.24, Ramakrishna Nagar,
Uthkkadu Road, Pollachi Taluk.

.. Petitioners

Vs

1.D.Ramanathan
S/o.Duraisamy Naidu
D.No.2/90 & 2/96, M.G.R. Nagar,
Puliampatti Village, Pollachi Taluk.

2.R.Maruthamuthu
S/o.Rangasamy Gounder
No.1/110, Mahaliamman Kovil Street,
Puliampatti Village, Pollachi Taluk.

3.A.Radhakrishnan
S/o.Appusamy Chettiar
No.24, Ramakrishna Nagar,
Uthkkadu Road, Pollachi Taluk.

4.A.Venkatraj

S/o.Appusamy Chettiar
No.24, Ramakrishna Nagar,
Uthkkadu Road, Pollachi Taluk.

5.A.Selvaraj @ A.Sivalingam

S/o.Appusamy Chettiar
No.3/51, Harijan Colony,
Periyakavandanur, Unjavelampatti Post,
Pollachi Taluk.

6.K.Santhamani @ Santhalakshmi

W/o. Late.Krishnasamy
Maniyakaran Thottam Salai,
Vilamarathupatti Post,
Udumalpet T.K.

7.D.Sathyabama

W/o.Devaraj
Kannamanayakanoor,
Meenachipuram Post,
Coimbatore District.

8.S.Parameswari

W/o.C.S.Srinivasan
D.No.46, S.V.V. Naidu Street,
Pollachi Taluk.

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, praying to reject the Execution Proceedings in E.P.R.No.143 of 2014 in O.S.No.344 of 1991 on the file of Subordinate Judge of Pollachi, till the disposal of appeal in A.S.No.211 of 1997 on the file of First Additional District Judge, Coimbatore.

For Petitioners

:Mr.P.V.Selvarajan
for Mr.R.Aranganathan

ORDER

The legal heirs of the deceased second defendant are the revision petitioners.

2. Originally suit has been filed in O.S.No.344 of 1991 by the plaintiffs 1 and 2, against the defendants 1 to 8 seeking the relief for specific performance. On 29.02.1996, the suit was decreed directing the defendants 2 to 8 to receive the balance sale consideration and also to execute the sale deed. Challenging the same, the defendants 2,3 and 4 have filed an appeal in A.S.No.211 of 1997 on the file of II Additional District Court, Coimbatore.

2. Pending appeal, the second defendant died on 27.01.2013. The legal representatives of the deceased second defendant has filed an application in I.A.No.883 of 2011 in A.S.No.211 of 1997 on the file of I Additional District Court, Coimbatore, to get themselves impleaded in the appeal proceedings.

2.1. Pending appeal, the decree holders/plaintiffs have filed an Execution Petition in E.P.No.143 of 2014 on the file of Sub Court, Pollachi. It is also represented that all the legal heirs of the

deceased second defendant are arrayed as respondents 9 to 12 in E.P.No.143 of 2014.

2.2. In the Execution Petition, a counter has been filed by the twelfth respondent, bringing it to the notice of the Court that the appeal in A.S.No. 211 of 1997 is pending before the Appellate Court. It is represented that the Executing Court is proceeding with the Execution Petition without waiting for the disposal of the appeal.

2.3. Contending that the execution petition is not maintainable as there is no executable decree, this Civil Revision Petition has been filed.

1. The learned counsel for the revision petitioners would submit that when there is no decree at all to be executed as it is under challenge in the appeal, the decree holders are not entitled to proceed with the Execution Petition. This legal position is correct. But the fact remains that once, at a time when the appeal got dismissed for non-prosecution and taking advantage of that situation, the decree holders have filed the Execution Petition and they were proceeding with the Execution Petition.

- 2.

4. It is also brought to the notice of this Court that A.S.No.211 of 1997 was dismissed for default on 10.07.2003, and by filing an application to set aside the dismissal, the same was restored to file and thus the decree is under challenge.

4.1. Therefore, when the decree is under challenge, the Executing Court cannot proceed with the Execution Petition and should not have proceeded to execute the decree.

5. Since the impleading petition is stated to be pending before the Appellate Court, in the interest of justice, the Appellate Court is directed to dispose of I.A.No.883 of 2011 in A.S.No.211 of 1997 i.e., the impleading application at the earliest preferably within two weeks from the date of receipt of this order.

5.1. After the disposal of the impleading petition, the Appellate Court shall endeavour to dispose of the appeal within a period of three months thereafter.

5.2. With the above direction, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

6. Registry is directed to communicate a copy of the said order to the Executing Court.

26.02.2016

ds

To

- 1.The I Additional District Court,
Coimbatore.
- 2.The Sub Court
Pollachi.

S.VIMALA ,J.,

ds

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