

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) Nos.676 & 682 of 2016

Khader Basha (Died)

1.Dastageer Basha
S/o.Late Babu Shahib

2.Fathimunnisha
D/o. Late Babu Shahib

3.Hyaath Basha
S/o. Late Babu Shahib

4.Azeenunnisha
D/o. Late Babu Shahib

5.Dawood Sheriff
S/o. Late Mecbool John

6.Zythunnisa
D/o. Late Mecbool John

7.Iqbal Sheriff
S/o. Late Mecbool John

8.Yacoob Sheriff
S/o. Late Mecbool John

9.Fathimunnisa
D/o. Late Mecbool John

10.Sulaiman Sheriff
S/o. Late Mecbool John

11.Ismail Sheriff
S/o. Late Mecbool John

.. Petitioners 1 to 11 in both CRPs

12.Saidha

D/o.Late Mecbool John

13.Shanwaz

S/o.Late Mecbool John

.. Petitioners 12 & 13 in CRP.No.682 of 2016

Vs

1.Xavier Sundarraaj

S/o.Anthoni Nadar

2.Pilomina

D/o.Selvamani

3.Arulmery

W/o.Anthoni Nadar

.. Respondents in both CRPs

Prayer in CRP (NPD) No.676 of 2015 :- Civil Revision Petition filed under Article 227 of the Constitution of India praying to direct the Executing Court for speedy disposal of the E.A.No.8 of 2016 in E.P.No.3 of 2014 in O.S.No.130 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Arcot.

Prayer in CRP (NPD) No.682 of 2015 :- Civil Revision Petition filed under Article 227 of the Constitution of India praying to direct the Executing Court for speedy disposal of the E.P.No.3 of 2014 in O.S.No.130 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Arcot.

For Petitioners

:Mr.T.R.Rajagopalan
Senior Counsel

COMMON ORDER

These revision petitions have been filed seeking direction for the disposal of E.A.No.8 of 2016 in E.P.No.3 of 2014 in O.S.No.130 of 2006 and E.P.No.3 of 2014 in O.S.No.130 of 2006 respectively on the file of the District Munsif-cum-Judicial Magistrate, Arcot, Vellore District.

2. The plaintiffs are the revision petitioners herein.

2.1. The plaintiffs are the children and grand children of the Babu Sahib, who is the original owner of the suit property. The said Babu Sahib is said to have executed a registered usufructuary mortgage dated 06.03.1972, against borrowal of Rs.4,000/-, in favour of one Selvammal, who is the mother of the defendants. After demise of Babu Sahib and Selvammal, the suit in O.S.130 of 2006 on the file of District Munsif cum Judicial Magistrate, Arcot, Vellore District, was filed by the plaintiffs to redeem the usufructuary mortgage and to direct the defendants to deliver the possession of the suit property to the plaintiffs.

3. The suit was dismissed on the ground that the plaintiffs are not entitled to the relief of redemption. Aggrieved over the

same, the plaintiffs have filed an appeal in A.S.No.17 of 2009 on the file of Additional District-cum-Sessions Court, Ranipet, Vellore District (Fast Track Court No.II, Ranipet), whereupon, the Appellate Court reversed the judgment and decree of the trial Court and decreed the suit directing the defendants to hand over the suit property to the plaintiffs.

4. Challenging the same, the defendants filed the Second Appeal in S.A.No.378 of 2010 and the said appeal was disposed of granting nine months time for the defendants to hand over possession of mortgaged property to the plaintiff.

5. Thereafter, the plaintiffs/petitioners filed an Execution Petition in E.P.3 of 2014 and Judgment Debtors filed application under Section 47 of the C.P.C., in E.A.No.8 of 2016.

6. The learned counsel for the revision petitioner would submit that even while delivering the judgment in S.A.No.378 of 2010, the Hon'ble High Court at the request of the counsel for the judgment debtor, has granted nine months time to hand over the possession of the mortgaged property, subject to the undertaking being filed.

7. It is represented that the judgment debtor is getting adjournment, on the pretext of filing the undertaking affidavit, but it is not being filed.

8. Under the stated circumstances, the direction is sought for with regard to speedy disposal of the E.A.No.8 of 2016 in E.P.No.3 of 2014 in O.S.No.130 of 2006 and E.P.No.3 of 2014 in O.S.No.130 of 2006 on the file of District Munsif-cum-Judicial Magistrate, Arcot, is justified.

8.1. The Executing Court is directed to dispose of the Execution Application as well as Execution Petition within a period of two weeks from the date of receipt of a copy of this order.

9. With the above direction, these Civil Revision Petitions are ordered.

15.03.2016

ds

Note: Issue order copy on 16.03.2016

To:
The District Munsif-cum-Judicial Magistrate Court
Arcot, Vellore District.

S.VIMALA ,J.,

ds

CRP (NPD) No.676 & 682 of 2016

15.03.2016