

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

**C.R.P.(NPD)Nos.765 and 766 of 2016 &
C.M.P.No.4203 of 2016 in C.R.P.(NPD)No.765 of 2016**

T.Thirumoorthy

... Petitioner

..VS...

1. B.S.Kolandasamy
2. R.Subbu

..Respondents

Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure against the fair and decreetal orders dated 29.01.2016 passed in E.A.Nos.89 and 90 of 2015 in E.A.No.65 of 2013 in E.P.No.88 of 2007 in O.S.No.134 of 1988 on the file of the learned Subordinate Judge, Bhavani.

For Petitioner : Mr.M.A.Muthalakan

For Respondents : Mrs.A.B.Rehanna Begum

COMMON ORDER

Challenging the fair and final orders dated 29.01.2016 passed in E.A.Nos.89 and 90 of 2015 in E.A.No.65 of 2013 in E.P.No.88 of 2007 in O.S.No.134 of 1988 on the file of the Subordinate Court, Bhavani, the petitioner, who is a third party, has filed the above Civil Revision Petition.

2. Pursuant to the decree granted in O.S.No.134 of 1988, the 1st respondent/decreed holder filed an Execution Petition in E.P.No.88 of 2007. The suit in O.S.No.134 of 1988 was filed by the plaintiff for specific performance. The trial Court, decreed the suit on 25.01.1993. In the Execution Petition, the revision petitioner filed an application under Order 21 Rule 58 of the Code of Civil Procedure, claiming right over the property. The said application was filed in the year 2013 and in the year 2015, the revision petitioner filed an application in E.A.No.89 of 2015 under Section 151 of the Code of Civil Procedure to re-open the application for letting in further evidence. The revision petitioner also filed an application in E.A.No.90 of 2015 to stay the execution petition, till the disposal of the suit in O.S.No.43 of 2014, pending on the file of the Subordinate Court, Bhavani. Though the petitioner has filed the application in E.A.No.90 of 2015 under Order 21 Rule 97, a reading of

the prayer sought for in the said application would only reveal that the said application is only to stay the execution petition. Though the petitioner has not mentioned that the application was filed under Order 21 Rule 26 of CPC, it should be construed as the application filed under Order 21 Rule 26 of CPC only. In the affidavit filed in support of the application to re-open the claim petition, the petitioner has stated that he wants to examine four more witnesses in the claim petition and therefore, the case should be reopened.

3. The Executing Court, taking into consideration the case of both parties, dismissed the applications, finding that revision petitioner has filed the applications only to protract the proceedings for an indefinite period. When the application is pending for more than two years, the petitioner has not examined the witnesses in the claim petition as averred in the affidavit filed in support of the application. The present applications were filed only to drag on the matter. When the suit was filed in the year 1988 and the decree was passed in the year 1993, the plaintiff is not in a position till today to get the fruits of the decree. If the petitioner/third party is really interested in examining the witnesses, he should have examined all the witnesses at once, at the earliest point of time. When the claim petition was kept pending for 3 years, now, the

applications for reopening the claim petition and to stay the execution petition cannot be entertained at this point of time.

4. In these circumstances, I am of the view that the dismissal of both the applications by the Executing Court is just and proper. I do not find any reason to interfere with the orders passed by the Executing Court. The Civil Revision Petitions are devoid of merits and hence the same are dismissed.

5. Since the Execution Petition is pending from 2007, I direct the Subordinate Court, Bhavani, to dispose of the Execution application in E.A.No.65 of 2013 within one month from the date of receipt of a copy of this order. The Executing Court is also directed to dispose of the Execution Petition in E.P.No.88 of 2007 as expeditiously as possible.

No costs. Consequently, connected miscellaneous petition is also dismissed.

08.08.2016

rg
To

The Subordinate Court, Bhavani

M. DURAISWAMY,J.,
rg

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