



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.472 of 2016 (PD)

and

C.M.P (MD) No.2059 of 2016

1.Pragathambal

2.Narandira Vadivel

..Petitioners/Respondents/
Defendants

Vs.

1.Muthusamy

S/o.Palanisamy,

President,

Veeramathiamman Thirukovil Trust,

63, Natchimuthupillai Compound,

Kuyavar Street, Palani Town,

Dindigul District.

2.Arumugam

S/o.Karuppusamy,

Secretary,

Veeramathiamman Thirukovil Trust,

122/5, South Street,

Pappampatti Village,

Palani Taluk,

Dindigul District.

..Respondents/Petitioners/
Plaintiffs

PRAYER: Civil Revision Petition is filed, under Section 115 of CPC., to set-aside the fair and decretal order, dated 21.01.2016 passed by the District Munsif, Palani in E.P.No.96 of 2012 in O.S.No.462 of 2003.

For Petitioners : Mr.T.Lenin Kumar

For Caveator/

Respondents : Mr.Venkatesh

ORDER

This Civil Revision Petition has been filed to set-aside the fair and decretal order, dated 21.01.2016 passed by the District Munsif, Palani in E.P.No.96 of 2012 in O.S.No.462 of 2003.

2.The respondents are the plaintiffs whereas the petitioners are the defendants. The respondents filed suit in O.S.No.462 of 2003 for declaration, recovery of possession and injunction against the petitioners. By the judgment and decree, dated 11.07.2007, the suit was decreed. Against that the petitioners



filed first appeal in A.S.No.27 of 2009 and the same was dismissed. Against the said order of dismissal, the petitioners filed S.A.No.35 of 2015 and the same is pending. While so, the respondents filed E.P.No.96 of 2012 to execute the decree, dated 11.07.2007 obtained by them for possession. The petitioners filed counter and stated that the E.P.No.96 of 2012 is not maintainable as Second Appeal is pending. The E.P., has been filed by respondents claiming to be President and Secretary of Veeramathi Amman Temple, they have no authority for representing the Temple. The learned Judge considering the facts and materials ordered the delivery of possession. Against that order, the petitioners have filed the present Civil Revision Petition.

3.The learned counsel for the petitioners submitted that the property in question is their ancestral property. The learned Judge erred in ordering the E.P.No.96 of 2012, while second appeal filed by them is pending. It is the residential building and the learned Judge erred in ordering the E.P. The persons, who have filed E.P., are not the same persons, who have filed suit. If possession is taken from the petitioners, it will affect the contention in the second appeal.

4.The learned counsel for the caveator submitted that the respondents filed E.P., for execution of decree passed in favour of the respondents. He further submitted that the suit is filed for declaration, recovery of possession and injunction and therefore, E.P., is maintainable. The learned Judge passed orders in E.P., to execute the decree passed in the suit. Therefore, prayed for dismissal.

5.I have heard both the learned counsel appearing for the petitioners and the respondent and also carefully perused the entire materials on record.

6.From the facts, it is seen that the respondents have filed suit for declaration, recovery of possession and injunction and the same has been decreed. The first appeal filed by the petitioners was dismissed. According to the petitioners S.A.No.35 of 2015 filed by him before this Court is pending. The petitioners have not filed any order of stay granted by this Court in Second Appeal. Originally the suit was filed by then President and Secretary. Now the E.P., is filed by Present President and Secretary. Therefore, the E.P., is maintainable. Execution Court cannot go beyond the decree. The learned Judge has considered all the materials on record and passed order by giving cogent and valid reasons. The said order does not warrant interference by this Court.

7.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)



To

The District Munsif, Palani, Dindigul District.

+1cc to Mr.T.Leninkumar, Advocate in SR.11736

+1cc to Mr.D.Venkatesan, Advocate in SR.11756

C.R.P (MD) No.472 of 2016 (PD)
29.02.2016

AM

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