

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P(NPD) No.1088 of 2017
and
C.M.P.No.5233 of 2017

1.Dallas
2.Pappa
3.Dhayala mary
4.Vimala
5.Allen David .. Petitioners

/versus/

A.S.Rani Clamantia .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order, dated 28.02.2017, passed in E.P.No.147 of 2015 in O.S.No.220 of 2009 on the file of the Sub Court, Tambaram and consequently, to dismiss the said Execution Petition.

For Petitioners:Mr.D.Senthil Kumar
For Respondent :Mr.A.R.Nixon

O R D E R

This Civil Revision Petition is filed against the dismissal order dated 28.02.2017 passed by the Subordinate Court, Tambaram in E.P.No.147 of 2015 in O.S.No.220 of 2009.

2. According to the petitioners, the petitioners herein have filed a suit in O.S.No.358 of 2012 before the Subordinate Court, Tambaram for permanent injunction against the respondents, their men, agents and others claiming right through them from any manner of trespassing into the 'A' schedule and thereby, interfering with their possession and enjoyment of the suit property and for costs. Likewise, the respondent herein has filed a suit in O.S.No.220 of 2009 against the petitioners before the Subordinate Court, Tambaram, for delivery of vacant possession of the suit 'B' schedule property by removing the illegal construction put up by the petitioners and consequential reliefs. The suit in O.S.No.358 of 2012 filed by the petitioners was dismissed on 02.06.2015 and the suit in O.S.No.220 of 2009 filed by the respondent was decreed on 02.06.2015.

3. Aggrieved by both the judgments, the petitioners herein have filed two appeals in A.S.Nos.20 and 21 of 2015 before the I Additional District Court, Chengalpattu and the same are now pending and adjourned from time to time for argument of the respondent's side.

4. In the mean time, the respondent herein filed two Execution Petitions in E.P.No.146 of 2015 in O.S.No.220 of 2009 before the Subordinate Court, Tambaram, to arrest and retain the petitioners/judgment-debtors in civil prison for violating para 5 of the decree of the original suit in O.S.No.220 of 2009 and E.P.No.147 of 2015 in O.S.No.220 of 2009 to direct the petitioners to deliver vacant possession of the 'B' schedule property by removing the unauthorized construction put up by the judgment debtors failing which, the Court may demolish the unauthorised construction and hand over the vacant site to the decree holder/respondent herein by appointing an officer of the Court. Against the order of delivery of possession in E.P.No.147 of 2015 in O.S.No.220 of 2009, the petitioners have filed the present civil revision petition before this Court.

5. The learned counsel appearing for the respondent would submit that the petitioners herein have filed an application in I.A.No.97 of 2015 in A.S.No.20 of 2015 to prevent the decree-holder/respondent herein from executing the decree before the first appellate Court and the said application was dismissed by the first appellate Court on 21.11.2015, pending disposal of the appeal. Thereafter, the petitioners have not chosen to challenge the aforesaid dismissal order passed by the first appellate Court. Hence, the said dismissal order has become final. Further, it is submitted that the petitioners have filed several applications viz., E.A.Nos.51 and 52 of 2016, E.A.Nos. 91 and 92 of 2016 and E.A.No.116 of 2016 with different prayers against the execution petitions and the same have already been dismissed by the Executive Court. Hence, the contention of the learned counsel appearing for the petitioners has to be rejected and the civil revision petition is liable to be dismissed.

6. Considering the said submissions made by learned counsel appearing for the parties and in view of the fact that the application in I.A.No.97 of 2015 in A.S.No.20 of 2015 filed by the petitioners to prevent the decree-holder/respondent herein from executing the decree, was dismissed by the first appellate Court on 21.11.2015 and the petitioners have not chosen to challenge the dismissal order, this Court is not inclined to interfere with the impugned order passed by the court below at this stage.

7. At this juncture, the learned counsel appearing for both sides submitted that before the first appellate Court, petitioners's side argument concluded and the appeals are posted for argument of the respondent's side.

8. In fine, the civil revision petition is dismissed. However, I Additional District Judge, Chengalpattu, is directed to conclude the arguments of both sides within a period of four weeks, from the date of receipt of a copy of this order and to pass final judgment as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.I Additional District Court, Chengalpattu.
- 2.The Sub Court, Tambaram.

+ 1 cc to Mr.A. R. Nixon, Advocate SR.17191

+ 1 cc to Mr.D. Senthil Kumar, Advocate Sr.17852(19/4/17)

C.R.P. (NPD) .No.1088 of 2017

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