

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2183 of 2014
& M.P.No.1 of 2014

1.Selvamani
2.Velmurugan
3.Shanmugham
4.Selvarani
5.Sundarammal
6.Sundarapandiyan

.. Petitioners

Vs.

1.Sellammal
2.Rajeswari

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 22.01.2014 made in R.E.P.No.183 of 2010 in O.S.No.857 of 1985 on the file of the II Additional District Munsif Court, Salem.

For Petitioners : Mr.R.Margabandhu
For Respondents : Mr.D.Shivakumaran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 22.01.2014 made in R.E.P.No.183 of 2010 in

O.S.No.857 of 1985 on the file of the II Additional District Munsif Court, Salem.

2. The petitioners are defendants 18 to 23 in O.S.No.857 of 1985, judgment debtors and respondents in E.P.No.183 of 2010. The respondents are the plaintiffs in O.S.No.857 of 1985, decree holders and petitioners in R.E.P.No.183 of 2010. The respondents filed suit for partition. A preliminary decree was passed on 10.04.1990 and a final decree has been passed. Against the final decree, the petitioners filed A.S.No.98 of 2004 and the first appeal was dismissed on 30.10.2009. Challenging the said judgment and decree, the petitioners filed S.A.No.248 of 2010 and the same is pending before this Court. The respondents filed I.A.No.1338 of 2000 for mesne profit and the same was allowed on 25.07.2003 directing the petitioners to pay a sum of Rs.1,000/- per annum from the date of petition till the date of possession of the property handed over to the respondents. The respondents filed R.E.P.No.183 of 2010 to execute the decree passed in I.A.No.1338 of 2000 by attachment and sale of the property belonging to the petitioners mentioned in the execution petition.

3. The petitioners filed counter in R.E.P. and opposed the said petition on the ground that the respondents cannot claim mesne profit for more than three years and their claim for nine years, after six years of passing decree is not maintainable. The petitioners have filed S.A.No.248 of 2010 and the same is pending before this Court.

4. Before the learned Judge, the respondents did not let in any oral evidence and marked Ex.P1/Judgment dated 30.10.2009 made in A.S.No.98 of 2004 on the file of the Fast Track Court No.II, Salem. The petitioners examined second petitioner as R.W.1 and marked seven documents as Exs.R1 to R7. Exs.C1 and C2 were marked as Court documents.

5. The learned Judge ordered attachment by rejecting the contention of the petitioners that the claim of the respondents is barred by limitation in view of the Article 136 of the Limitation Act, wherein 12 years period is prescribed for execution of the decree. The petitioners have not filed any appeal against the decree passed in I.A.No.1338 of 2000 and in the second appeal filed by the petitioners against the passing of final decree, this Court did not grant any stay.

6. Against the said order dated 22.01.2014 made in R.E.P.No.183 of 2010, the present Civil Revision Petition is filed by the petitioners.

7. Heard both sides and perused the materials available on record.

8. The learned counsel for the respondents submitted that S.A.No.248 of 2010 filed by the petitioners was dismissed by this Court vide judgment and decree dated 30.10.2014 reported in 2015(1) MWN (Civil) 739 (Selvamani and others v. Chellammal and others).

9. The learned counsel for the petitioners contended that the claim of the respondents is barred by limitation. The said contention has no merits in view of the fact that the preliminary decree and final decree has been passed. The petitioners have challenged the final decree by way of filing A.S.No.98 of 2004 and the said appeal was dismissed. Challenging the same, the petitioners filed S.A.No.248 of 2010 and this Court also dismissed the second appeal by the judgment and decree dated 30.10.2014. Further, the

petitioners have not challenged the order passed in I.A.No.1338 of 2000 and the said order has become final.

10. In view of the above facts, R.E.P.No.183 of 2010 filed by the respondents is not barred by limitation as per the Article 136 of the Limitation Act. The learned Judge considering all the aspects in proper perspective rightly ordered attachment. In view of the dismissal of S.A.No.248 of 2010 filed by the petitioners, the Civil Revision Petition is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

20.10.2017

Index : Yes/No
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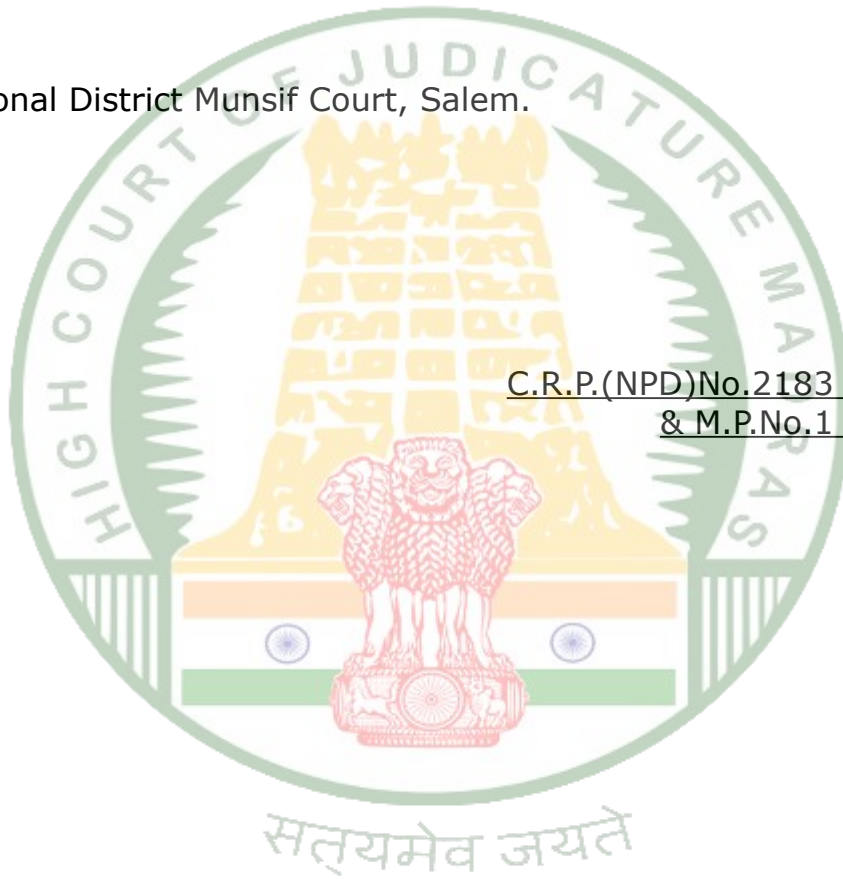
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V.M.VELUMANI, J.

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To

II Additional District Munsif Court, Salem.



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