

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (NPD) NO.2609 OF 2017
AND CMP. NO.12434 OF 2017

Kaliyaperumal

... Petitioner

Vs.

1.Rajagopal
2.Sarangapani

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 21.06.2017 made in E.A.No.228 of 2013 in E.P.No.7 of 2010 in O.S.No.144 of 1985 on the file of Principal Subordinate Court, Villupuram.

For Petitioner : Mr.C.Prabakaran

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 21.06.2017 made in E.A.No.228 of 2013 in E.P.No.7 of 2010 in O.S.No.144 of 1985 on the file of Principal Subordinate Court, Villupuram.

2. This Civil Revision Petition is directed against the order passed in a petition to reopen the Execution Petition for cross examination.

3. The petitioner herein is the judgment debtor / respondent/ plaintiff in the Execution Petition. The suit is of the year 1985. The suit was decreed, against which, an appeal was preferred by the respondents herein / defendants in A.S.No.55/1987 and the same was dismissed. The Second Appeal was allowed in S.A.No.1435/1990. Against the judgment passed in the Second Appeal, the petitioner herein / plaintiff preferred a Special Leave Petition before the Hon'ble Supreme Court and the same was also dismissed on 20.02.2009. Thereafter, the Execution Petition came to be filed in the year 2010. Ever since the Execution Petition is protracted under one pretext or the other. The matter was posted for cross examination of P.W.1 on 12.03.2012. Since no cross examination was done, it was closed on 08.04.2013 and the matter was posted for respondents side evidence on 18.04.2013 and 12.08.2013. At that stage, the petition to reopen the case for cross examination was filed on 16.08.2013.

4. It is also pertinent to note that a Civil Revision Petition was

filed before this Court in CRP (PD) No.131 of 2014. This Court vide order dated 03.02.2017, has directed the Execution Court to dispose of the Execution Petition, within a period of six months from the date of receipt of a copy of the said order. The six months period is getting over by 3rd August 2017. Considering the time constraint and the adjournments taken by the petitioner, the Execution Court has dismissed the petition. The observation made by the Execution Court is that the petitioner is trying to drag on the proceedings as long as possible.

5. The learned counsel appearing for the petitioner would submit that the petitioner shall be given an opportunity to cross examine P.W.1, as it is the last chance for him to prove his case. He would also make an assurance that if an opportunity is given to him, he would complete the cross examination, within a period of one week from the date of receipt of a copy of this order and will cooperate in completing the proceedings, within the time limit fixed by this Court.

6. But the fact remains that the Execution Petition is filed for

restitution of the possession of the suit property. The right of title, which the petitioner / plaintiff has already been discussed at various levels upto Supreme Court. Re-agitating the very same issue, which has already been decided by Courts by way of cross examination of P.W.1 is nothing but a vain attempt. The Execution Court cannot go behind the decree and the said exercise will ultimately protract the proceedings, as rightly found by the Execution Court.

7. In such factual background, the finding of the Execution Court warrants no interference. The Civil Revision Petition does not merit consideration and accordingly, stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

31.07.2017

Index : Yes/No

Internet : Yes/No

Note : **Issue order copy on 04.08.2017**

TK

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To

The Principal Subordinate Court
Villupuram.



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M.GOVINDARAJ, J.

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