

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(NPD) NO.2719 OF 2017
AND CMP NO.12913 OF 2017

1.Poochamamal
2.Papathi
3.Subramani
4.Selvaraj

... Petitioners

1.Thangaraj
2.Malar

... Respondents

Vs.

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order and decretal order dated 02.06.2017 made in R.E.A.No.30 of 2017 in R.E.A.No.196 of 2011 in M.C.O.P.No.60 of 2000 on the file of Subordinate Court, Attur.

For Petitioners : Mr.E.C.Ramesh

ORDER

This Civil Revision Petition is directed against the dismissal of the execution application filed to call for the documents from Salem District Central Cooperative Bank, Salem.

2. The first respondent is the judgment debtor and the second respondent is the decree holder. The petitioners are third parties and siblings of the judgment debtor. The first respondent / judgment debtor is liable to pay a sum of Rs.1,50,000/- with interest at the rate of 7.5% per annum, as per the judgment and decree passed in MCOP No.60 of 2000, dated 13.08.2007, to the second respondent herein. In execution of the award amount, the property was sought to be attached by the decree holder / claimant.

3. The contention of the petitioners / third parties before the Execution Court is that it is a joint family property and in order to prove that they are also having share, they filed an application in R.E.A.No.30 of 2017 before the Execution Court to call for the documents from the District Central Cooperative Bank, Salem, where the documents are

deposited towards mortgage.

4. The Trial Court has come to a conclusion that if at all the third parties want to prove their right in the property, which is sought to be auctioned, they could have obtained a certified copy from the Bank or from the Court, or from the Registrar's office. Instead, calling for the documents from the Bank is totally unnecessary. The Trial Court has dismissed the application, accepting the contention of the decree holder that the application was filed with an ulterior motive to protract the proceedings.

5. Even though the award was passed by the Motor Accidents Claims Tribunal as early as on 13.08.2007, the judgment debtor is successfully dragging on the matter for the past 11 years. If at all the third parties have any right in the property, they can safeguard it, by producing acceptable evidence, before the Execution Court, instead, calling for the document from the Bank, to prove their title. Therefore, this Court finds that the contention of the decree holder that the petitioners are adopting dilatory tactics to defeat the rights of the first respondents is well founded.

6. Be that as it may, the application filed by the third parties is not based on *bonafide* reasons, nor they were left out without any opportunity to produce the same. The Trial Court has rightly found that the application filed by the third parties is unsustainable in law. In such circumstances, this Court is also of the same view that the Civil Revision Petition does not deserve to be admitted and accordingly, the same stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

16.08.2017

Index : Yes/No

Internet : Yes/No

TK

To

The Subordinate Court
Attur.

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M.GOVINDARAJ, J.

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