

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No. 348 of 2017
and
C.M.P No. 1583 of 2017

1. Selvaraj
 2. Chellammal
- ... Petitioners

vs.

1. Ammni Ammal
 2. Dhanalakshmi
 3. Semmalai Padayachi
 4. Rajendran
 5. Murugan
Karupan (Died)
 6. Duraisamy @ Durai
 7. Narayanan
 8. Perumal
 9. Pachamuthu
 10. Thangamani
 11. Pounambal
- ... Respondents

Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the order and decreetal order dated 08.11.2016 passed in REA No. 93 of 2012 in REP No. 2 of 2001 in O.S.No.227 of 1989 on the file of the learned District Munsif, Attur.

For Petitioners : Mr. A. Rajakumar

For Respondents :

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 08.11.016 passed in REA No. 93 of 2012 in REP No. 2 of 2001 in O.S.No.227 of 1989 on the file of the learned District Munsif, Attur.

2. Learned counsel for the petitioners submitted that originally the suit properties belonged to one Lakshmana Naicker allotted to him, through an assignment order. The respondents 1 and 2 are his wife and daughter. During his life time, the said Lakshmana Naicker had sold the property to many parties, in portions. It is stated that one such portion of the suit property have been sold to the petitioners, executing sale deed but the

papers were not registered stating that it is a condition land. It is further stated that the persons who purchased the property, are in possession of the property for about 30 years and a few have sold their property. After the demise of the said Lakshmana Naicker, the respondents 1 and 2 had filed a suit for declaration against the respondents 3 to 8 herein, in O.S. No.227 of 1989, before the District Munsif Court, Attur and obtained a decree in their favour. In order to execute the decree and for delivery of the suit property, the respondents 1 and 2 filed an execution petition in REP No. 2 of 2001. Since the same was pending, the respondents 1 and 2, filed two applications to remove the obstacles and break open the lock of the house in the suit property. According to the petitioners, they were not aware of the decree passed on 12.12.1996 in O.S.No.227 of 1989. On coming to know of the proceedings, the petitioners have filed a suit in O.S. No.33 of 2012 before the District Munsif Court, Attur for permanent injunction, along with the stay application in I.A. No.169 of 2012 seeking for an ad-interim injunction. The said application is pending and no interim orders was granted by the learned District Munsif Court, Attur. In the meantime, the

petitioners filed R.E.A. No.93 of 2012 seeking to stay the execution proceedings passed in R.E.P No.2 of 2001, before the said Court. Challenging the dismissal order passed on 08.11.2016 in the said R.E.A. No.93 of 2012, the petitioners have filed the present revision before this Court.

3. According to the petitioners, they have purchased the property and they are in possession of the property. Since they were not party to the proceedings in O.S. No. 227 of 1989, they have filed the application in R.E.A. No.93 of 2012 as well as the aforesaid suit in O.S. No. 33 of 2012 before the learned District Munsif Court, Attur.

4. Learned counsel for the petitioners further submitted that the trial court has not passed orders in I.A. NO. 169 of 2012 and the same is still pending before the District Munsif Court, Attur. At this stage, this Court cannot interfere with the order passed in the execution petition in R.E.P. No. 2 of 2001. However, requested this Court to give appropriate direction to the learned District Munsif, Attur to dispose of the

application in I.A. No.169 of 2012 within a stipulated time, since the same is pending for more than 4 years. As per Order XXXIX Rule 3A of Code of Civil Procedure, where an injunction has been granted without giving notice to the opposite party, the court shall make an endeavour to finally dispose of the application within thirty days from the date on which, the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.

5. Heard learned counsel for the petitioners and perused the material on records.

6. Order XXXIX Rule 3A of Code of Civil Procedure reads as follows :

"3A. Court to dispose of application for injunction within thirty days.- Where an injunction has been granted without giving notice to the opposite party, the court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it

is unable so to do, it shall record its reasons for such inability."

In the case on hand, the court below without considering the aforesaid provisions has kept the said application pending, for such a long time.

7. Therefore, to meet the ends of justice, this Court is inclined to direct the District Munsif, Attur to follow the provisions given under Order XXXIX Rule 3A of CPC, and dispose of the petitions, as expeditiously as possible.

8. With the above observation, the Civil Revision Petition is disposed of, at the stage of admission itself. Consequently, the connected M.P is closed. No costs.

26.04.2017

Index : yes / no

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To
The District Munsif Court, Attur

D.KRISHNAKUMAR, J.

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