

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2030 of 2012
and
M.P.No.1 of 2012**

1.Saraswathi

2.Senthilvel

3.Santhi

.. Petitioners

Vs.

1.Senthilkumar

2.Saraswathi

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the order and decree dated 02.03.2012 made in E.A.No.138 of 2010 in E.P.No.46 of 2010 in O.S.No.57 of 1985, on the file of the Principal Sub Judge, Tindivanam.

For Petitioners : Mr.D.Ravichander

For Respondents : Mr.V.Raghavachari

ORDER

The petitioners have filed this Civil Revision Petition as against the dismissal order made in E.A.No.138 of 2010 in E.P.No.46 of 2010 in O.S.No.57 of 1985, dated 02.03.2013 on the file of the learned Principal Sub-Court, Tindivanam.

2.The case of the revision petitioners is that the respondents herein obtained the decree of declaration, recovery of possession and permanent injunction against their father late.Dhandapani. In order to execute the said decree, the respondents herein filed E.P.No.46 of 2010. Along with E.P, the respondents herein also filed E.A.No.138 of 2010 under section 50(1) of CPC to bring the petitioners herein as legal representatives of the deceased Dhandapani. The said E.A.No.138 of 2010 was allowed by the execution Court. Feeling aggrieved over the same, the revision petitioners are before this Court.

3.According to the learned counsel for the revision petitioners, their father died during the pendency of appeal suit and the respondents herein have not chosen to take steps to bring the petitioners herein as legal representatives of the deceased Dhandapani

and hence the above E.A. is not maintainable. It is further contented that the respondents/petitioners are not in physical possession of the suit properties and therefore the Respondents herein/Decree Holder can't take delivery of the properties. However, the executing Court without considering the said aspect, has erroneously allowed the application and hence, he prays to allow this Civil Revision Petition.

4.Per contra, the learned counsel for the respondents submitted that the learned Judge was right in holding that merits of the matter could be gone into only in the main execution petition. Therefore, the learned counsel prayed to dismiss the Civil Revision Petition.

5.I heard Mr.D.Ravichander, learned counsel for the petitioner and Mr.V.Raghavachari, learned counsel for the respondents and perused the entire materials available on record.

6.In this case the execution application filed by the respondents herein to bring the petitioners herein as legal representatives of the deceased Dhandapani was allowed. Considering the contention of the revision petitioners that their father died during the pendency of the appeal suit, but no steps were taken by the respondents herein to

bring the revision petitioner as respondents 2 to 4 in the execution petition cannot be accepted for the simple reason that they have not substantiated the same by producing relevant records to show that their father died during the pendency of the appeal suit No.7074 of 1989. In respect of the contention that the revision petitioners are not in possession over the suit property and therefore no delivery could be taken from them is concerned, the execution Court has rightly held that the said contention would be decided only at the time of deciding the execution petition, not at the stage of L.R. application.

7. In my view the execution Court has rendered a proper finding and the same is legally sustainable. The finding rendered by the trial Court does not call for any interference by this Court.

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8.In the result, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

01.03.2017

vs

Note:Issue order copy on 24.01.2019

Internet:Yes/No

Index:Yes/No

To

The Principal Sub Judge, Tindivanam.



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M.V.MURALIDARAN, J.

VS



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