



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.06.2017
CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P (PD) (MD) No. 2146 of 2014
and
M.P. (MD) No. 1 of 2014

1. Kanniammal
2. Durai @ Manimaran
3. Chellathambi
4. Subbulakshmi

.. Petitioners

Vs.

1. Peter
2. Jermandass

.. Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order passed in E.A.No.82 of 2014 in E.A.No.316 of 2010 in E.P.No.240 of 2001 in O.S.No.187 of 1997 on the file of the 1st Additional Subordinate Judge, Madurai dated 30.06.2014.

For Petitioners : Mr.R.Manoharan

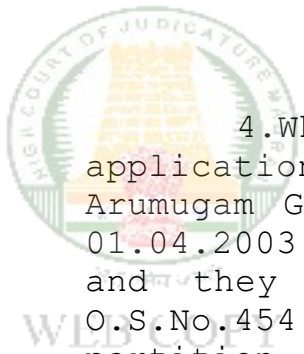
For Respondents : Mr.R.V.Rajkumar

ORDER

The revision petition is directed against the dismissal of the application filed by the revision petitioners in the execution petition. In the execution petition, the revision petitioners are the defendants. A suit was filed for recovery of money against the father of the revision petitioners. The said suit was decreed. After the decree, the suit property was brought for auction and one Mr.Peter has been the auction purchaser.

2. When an application for delivery of possession was filed by the auction purchaser, the revision petitioners have filed a counter affidavit stating that partition suit in O.S.No 454 of 2009 is pending and therefore, till the disposal of the partition suit, the delivery of possession should not be effected.

3. The Execution Court after going through the pleadings and documentary evidence has observed that in the suit for recovery of money, final decree was passed on 22.12.1999 and pursuant to the final decree, the suit property was brought to auction sale and third party interest come into play.



4. Whiles, the revision petitioners have taken out an application to stay the delivery of possession on the ground that Arumugam Gandhi, the father of the revision petitioners, died on 01.04.2003 leaving behind the revision petitioners as legal heirs and they have filed a partition suit which is pending in O.S.No.454 of 2009 and therefore, till the disposal of the partition suit, the delivery of possession should not be effected.

5. Learned counsel for the first respondent submits that the partition suit in O.S.No.454 of 2009 is dismissed for non prosecution.

6. After going through the pleadings and documentary evidence, the Execution Court has held that the third party auction purchaser interest come into play, under such circumstances, the application filed by the legal heirs is only an attempt to drag on the proceedings. The Execution Court has rightly dismissed their application. This Court finds no reason to stay the delivery of possession till the disposal of O.S.No.454 of 2009.

5. Hence, this revision petition is dismissed. In the above said circumstances, the Execution Court is directed to dispose of E.A.No.82 of 2014 in E.A.No.316 of 2010 in E.P.No.240 of 2001 in O.S.No.187 of 1997 and deliver the possession, as expeditiously as possible. No costs. Consequently, M.P.(MD)No.1 is also dismissed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To:

The 1st Additional Subordinate Judge,
Madurai.

+1cc to Mr.R.V.Rajkumar, Advocate Sr.No.62661
+1cc to Mr.R.Manoharan, Advocate Sr.No.62139

VSG/MRN

VB/JC/SAR2/07.07.2017/2P/4C

**C.R.P (NPD) (MD) No.2146 of 2014
and
M.P. (MD) No.1 of 2014
27.06.2017**