



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2017

CORAM :

WEB COPY

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (NPD) (MD) No. 2083 of 2015

and

M. P (MD) No. 1 of 2015

- 1) Kuttan Nadar (Died)
- 2) Sundari
- 3) Wilson
- 4) Rethnadhas
- 5) Kanakaraj
- 6) Bright
- 7) Radha

... Petitioners

(Petitioners 2 to 7 brought as LRs of deceased sole petitioner vide court order dated 02.03.2016 made in CMP (MD) No. 1821/16 in CRP (MD) No. 2083/15).

vs.

- 1) Jabamony
- 2) Lalitha
- 3) Regikumar
- 4) Ajithakumari
- 5) Jayachandrakumar

... Respondents

Prayer:- Civil Revision Petition filed the under Article 227 of Constitution of India, against the fair and decreetal order passed in E.A.No.131 of 2015 in E.A.No.267 of 2004 in E.A.No.249 of 2004 in O.S.No.36 of 1996 on the file of Principal District Munsif Court, Kuzhithurai, dated 28.06.2015.

For Petitioner

: Mr.M.P.Senthil

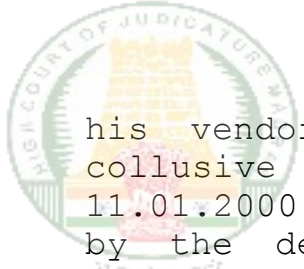
For R1

: Mr.P.Saravanakumar for
Mr.M.Velkaniraju

ORDER

This revision petition is filed against the dismissal of E.A.No.131 of 2015 in E.A.No.267 of 2004 in E.A.No.249 of 2004 in O.S.No.36 of 1996 on the file of Principal District Munsif Court, Kuzhithurai, dated 28.06.2015.

2.It is the claim of the revision petitioners that the deceased 1st petitioner/Kuttan Nadar is the owner of 13 acres and 85 cents of property which he has acquired through a compromise decree in the suit O.S.No.301/92 filed by him against one Jebamony S/o. Isravel. While so, a suit in O.S.No.36/96 was filed by another person by name, Jebamany S/o. Neelakandan Nadar, against



his vendor Jebamony S/o.Isravel for specific performance and collusive decree was obtained for the very same property on 11.01.2000. Pursuant to that decree, execution petition was filed by the decree holder in E.P.No.22/03, wherein, he filed an obstruction petition under Order 21 Rule 97 in E.A.No.267/04. From out of 13 acres, he sold around 16 cents to Shobana Bai and she also filed another obstruction petition in E.A.No.83/08.

3.While both the obstruction petitions were pending, the Trial Court dismissed the obstruction petition filed by Shobana Bai in E.A.No.83/08 on 06.11.2014. Following the dismissal of E.A.No.83/08, without giving opportunity to the present revision petitioner in his E.A.No.267/04, the Execution Court has dismissed his application as infructuous. Aggrieved by that, the revision petitioner has filed an application in E.A.No.131/15 to restore E.A.No.267/04 which was closed as infructuous. That E.A.No.131/15 was dismissed on the ground that in spite of several opportunities, the petitioner did not co-operate for the enquiry and was waiting for the disposal of the other E.A.No.83/08 filed by Shobana Bai and only thereafter, he wanted to pursue his application which exposes his mala fide intention of protracting the proceedings.

4.The revision petitioner taking strong objection in the manner in which the application was rejected, seeks indulgence of this Court to have a fair opportunity to put forth his case before the Execution Court as to how he is entitled to retain possession of the property as a title holder.

5.The learned counsel for the respondents submitted that the impugned order vividly explains the clear intention of the revision petitioner who has filed his obstruction petition with ulterior motive just to deprive the decree holder from enjoying the fruits of the decree.

6.This Court after perusing the records finds that there is a prima facie case made out by the revision petitioner regarding his right over the suit property by virtue of a compromise decree passed by the court as early as on 04.02.2004 in O.S.No.301/92.

7.Therefore, this Civil Revision Petition is allowed. No costs. The execution Court is directed to take E.A.No.267/04 on file and adjudicate it in accordance with law and dispose of the application within a period of three months. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True copy/



To

The Principal District Munsif,
Kuzhithurai.

+1 CC to M/s.M.VEILKANIRAJU, Advocate, SR No. 15356

+1 CC to M/s.M.P.SENTHIL, Advocate, SR No. 15393

NBI

PSM/SV-MMS/27.03.2017/3P/4C

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