



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M. VELUMANI**

CRP (MD).Nos.2700 and 2701 of of 2015

1. R. Parvathavardhini
2. Mangalam
3. R. Vinoth

:Petitioners in both CRPs

Vs.

S. Kasthuri

:Respondents in both CRPs

Prayer in CRP.No.2700 of 2015: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the Docket order dated 03.12.2015 passed in un-numbered E.A.No. Of 2015 in E.P.Nos.139 of 2012 in O.S.No.72 of 1981 on the file of the Principal Sub Court, Thanjavur.

Prayer in CRP.(MD)No.2701 of 2015: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28.10.2015 passed in E.P.No.139 of 2012 in O.S.No.72 of 1981 on the file of the Principal Sub Court, Thanjavur.

For Petitioners : Mr.M.P. Senthil in both CRPs

For Respondent No.1 : Mr. D. Nallathambi in both CRPs

COMMON ORDER

The Civil Revision Petition in CRP.(MD).No.2700 of 2015 is filed against the Docket order dated 03.12.2015 passed in un-numbered E.A.No. of 2015 in E.P.No.139 of 2012 in O.S.No.72 of 1981 on the file of the Principal Sub Court, Thanjavur.

2. The Civil Revision Petition in CRP.(MD).No.2701 of 2015 is filed against the fair and decreetal order dated 28.10.2015 passed in E.P.No.139 of 2012 in O.S.No.72 of 1981 on the file of the Principal Sub Court, Thanjavur.

3. The petitioners are legal heirs of the plaintiff in O.S.No.72 of 1981 and petitioners in un numbered E.A filed in the year 2015 in E.P.No.139 of 2012 in O.S.No.72 of 1981 on the file of the Principal Sub Court, Thanjavur. The respondent is a third defendant in O.S.No.72 of 1981 and petitioner in E.P.No.139 of 2012.

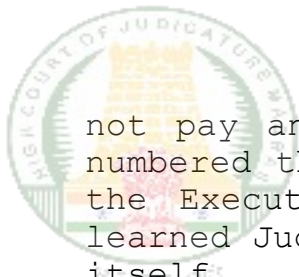
4. The father of the petitioners Late T.A. Rathinavelu filed O.S.No.72 of 1981 against one **\*Lakshmi Ammal** for recovery of a sum of Rs.27,042.50/- together with interest and return of three



sovereigns of gold chain and four Gold Bangles worth six sovereigns. The said suit was partly decreed for the amount claimed and return of two gold bangles and other claim was dismissed. The said **\*Lakshmi Ammal** filed A.S.No.885 of 1986 before this Court, pending appeal the said **\*Lakshmi Ammal** died. His brother T.A.Natarajan was impleaded as second appellant. Father of the petitioners also died pending appeal. The petitioners' mother and petitioners were impleaded as respondents 2 to 5 in the first appeal. This Court by the Judgment and decree dated 24.07.2003 allowed the first appeal confirming the judgment and decree of the trial Court with regard to recovery of money alone and directed the petitioners and wife of the plaintiff to vacate the house and hand over the vacant possession to the appellant within a period of one month. In the decree in A.S.No.885 of 1986 the direction of this Court directing the petitioners to hand over the possession of suit property was not incorporated. Therefore, the said T.A. Natarajan filed I.A.No.324 of 2009 to amend the decree to include the prayer for recovery of possession in the decree passed in Appeal Suit as ordered by this Court. The said Natarajan died pending application in I.A.No.324 of 2009 and the respondent filed I.A.No.336 of 2009 to implead herself as legal heir of Natarajan. The said Interlocutory Application was ordered on 22.06.2010 impleading the respondent. Subsequently, I.A.No.324 of 2009 was allowed by order dated 11.01.2012 amending the decree as per the order passed by this Court in A.S.No.885 of 1986 for recovery of possession of the property from the petitioners to Natarajan. As per the amended decree the respondent filed E.P.No.139 of 2012, for recovery of possession. Thereafter, the petitioners filed an application under Section 47 of CPC and the same was returned by the learned Judge by order dated 28.10.2015 as not maintainable. The said petition was represented by the petitioners on the ground that executability of the decree can be decided only by the Execution Court and not by separate suit. The learned Judge by order dated 03.12.2015 rejected the petition as not maintainable on the ground that the petitioners are agitating the judgment passed by this Court in A.S.No.885 of 1986 and the petitioners have not challenged the order impleading the respondent as a party and an order amending the decree. Further, the learned Judge by the order dated 28.10.2015 passed an order in E.P.No.139 of 2012 for recovery of possession of the property from the petitioners herein.

5. Aggrieved against the docket order passed in the application in un numbered E.A. dated 03.12.2015 and the fair and decreetal order passed in E.P.No.139 of 2012, dated 28.10.2015, the petitioners have come out with the present Civil Revision Petitions.

6. The learned counsel appearing for the petitioners submitted that impleading the respondent and an order of amendment passed in I.A.Nos.324 and 336 of 2009 are erroneous. The learned Judge failed to consider the genuineness of the Will and it cannot be decided in the summary proceedings. The learned Judge ought to have seen that the defendant did not make any counter claim and did



not pay any Court fee. Further, the learned Judge ought to have numbered the Execution application filed under Section 47 of CPC in the Execution Petition and decide the matter on merits. The learned Judge erroneously rejected the application at the threshold itself.

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7. The learned counsel appearing for the respondent submitted that after contest, passed the judgment in A.S.No.885 of 1986 directing the petitioners to deliver the vacant possession of the house property to the respondent. Similarly, the learned Judge allowed applications in I.A.Nos.324 and 326 of 2009 filed for amendment and impleading the respondent after contest considering the objection of the petitioners, Judgment passed in the first appeal by this Court. The petitioners have not filed any revision or appeal challenging the orders passed in the Interlocutory applications and Judgment and decreed passed in A.S.No.885 of 1986 and prayed for dismissal of these Civil Revision Petitions.

8. I have heard the learned counsel appearing on either side and perused the materials available on record.

9. It is seen that father of the petitioners succeeded in O.S.No.72 of 1981. The original defendant **\*Lakshmi Ammal** filed A.S.No.885 of 1986 before this Court and this Court modified the decree of the trial Court made in O.S.No.72 of 1981 confirming the decree with regard to recovery of money and return of jewels. Further, this Court allowed the claim of the defendant for recovery of her house property from the possession of the plaintiff, who is the father of the petitioners herein. On the death of their father, petitioners were impleaded as respondents in A.S.No.885 of 1986. Even though the petitioners are parties in the first appeal, they did not challenge the Judgment of this Court directing them to hand over the possession to the defendant. Similarly, the petitioners contested the applications in I.A.Nos.324 and 326 of 2009 filed by the respondent. When the said applications were allowed, they did not challenge the orders dated 22.06.2010 and 11.01.2012 passed in I.A.Nos. 324 and 326 of 2009 respectively. The Execution Petition was numbered in the year 2012 and after three years and after contest orders were passed on 28.10.2015 in E.P.No. 139 of 2012 directing the petitioners to deliver the vacant possession of the respondent. Only in the year 2015, the petitioners filed the present application under Section 47 of CPC. A reading of the materials on record clearly reveals that petitioners are not challenging the judgment of this Court made in A.S.No.885 of 1986 dated 24.07.2003 and orders passed in the I.A.No.336 and 324 of 2009 dated 22.06.2010 and 11.01.2012 respectively. The executing Court cannot go beyond the decree passed in the proceedings and therefore, the learned Judge has rightly passed an order in the E.P directing the petitioners to deliver the possession to the respondent as well as rejecting the application filed under Section 47 of CPC filed by the petitioners without numbering the same. In the circumstances, there is no



illegality or irregularity in the order passed by the Court below warranting interference by this Court.

10. In the result, the Civil Revision Petitions are dismissed. No costs.

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**(\*) Ammedned as per order of this Hon'ble'  
Court dated 02.02.2017**

/True Copy/

Sd/-  
Assistant Registrar(CS-II)

sd/-  
Assistant Registrar

Sub Assistant Registrar(CS)

To

**(\*) To be substituted the order already despatched on 25.01.2017**  
The Principal Subordinate Judge, Thanjavur.

+1cc to M/s.M.P.Senthil, Advocate in SR.365  
+1cc to M/s.D.Nallathambi, Advocate in SR.392

CRP (MD).Nos.2700 and 2701 of of 2015  
03.01.2017

trp  
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