



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) (NPD)No.2111 of 2017

and

C.M.P. (MD)No.10521 of 2017

1.Ashoka Devi
2.Saraswathy
3.Jeya Sree

... Petitioners

Vs.

Shabu

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the order passed in E.P.No.90 of 2014 in O.S.No.383 of 2010 on the file of the Principal District Munsif, Kuzhithurai, dated 02.03.2017.

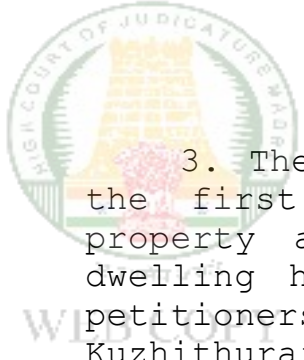
For Petitioners : Mr.C.K.M.Appaji

For Respondent : Mr.G.Ramanathan

O R D E R

The Civil Revision Petition has been filed against the order passed by the Principal District Munsif, Kuzhithurai in E.P.No.90 of 2014 in O.S.No.383 of 2010, dated 02.03.2017.

2. The respondent is the plaintiff and the petitioners are the defendants in O.S.No.383 of 2010. The respondent/plaintiff filed a suit in O.S.No.383 of 2010 before the Principal District Munsif, Kuzhithurai for declaration and recovery of possession of 'B' scheduled property and for permanent injunction restraining the defendants from trespassing into the 'A' Scheduled property. The suit was decreed in favour of the respondent/plaintiff. Thereafter, the respondent/plaintiff filed an application in E.P.No.90 of 2014 in O.S.No.383 of 2010 before the learned Principal District Munsif, Kuzhithurai under Order 21 Rule 35 of C.P.C., to deliver the E.P. scheduled property as per decree stating that though the 'B' scheduled property has been declared in his favour and recovery of possession was also decreed, the petitioners/judgment debtors have not handed over the possession. For which, the respondents/judgment debtors filed a counter stating that there is no other house or property to these petitioners to live and on the basis of the signature obtained in a fraudulent manner for the loan of Rs.50,000/-, the respondent/plaintiff has filed the suit and obtained the decree.



3. The learned counsel for the petitioners would submit that the first revision petitioner/defendant is the owner of the property and she is working as coolie and she has no other dwelling house for her stay. He would further submit that the petitioners/defendants have filed an appeal before the Sub Judge, Kuzhithurai with the condone delay application in I.A.No.90 of 2014 in A.S.S.R.No.147 of 2014. The respondent/plaintiff had already filed a counter to the condone delay application on 20.12.2015 and hence, the observation that no appeal is pending against the decree based on the memo filed by the judgment debtor is despicable.

4. The learned counsel for the respondent/plaintiff would submit that the appeal suit is pending and it is in SR stage. He would further submit that the suit is of the year 2010 and it has been decreed on 20.08.2013 and on delivery date, the petitioners/defendants have not filed any appeal.

5. Admittedly, the appeal is filed and it is only in the SR stage. On perusal of the records shows that the suit was filed in the year 2010 for declaration and recovery of possession of 'B' scheduled property and for permanent injunction restraining the defendants from trespassing into the 'A' Scheduled property and the E.P.No.90 of 2014 has been filed by the decree holder for delivery of 'B' scheduled property as the judgment debtors do not obey the order of the Court. The very contention of the petitioners is that the decree holder has obtained the decree on the basis of the signature obtained in a fraudulent manner and hence, he has preferred an appeal. The learned Principal District Munsif, Kuzhithurai, has rightly dismissed the application stating that the Court cannot go into the issues, since the Execution Court cannot go beyond the decree and the contention was raised by the respondents/judgment debtor even in the suit and the same was negated by the trial Court. The petitioners/defendants have not even taken any steps being taken immediately to get the appeal filed and obtained the order of interim stay, which has not been done so far and as on date, no appeal is pending, except the condone delay petition. Therefore, there is no infirmity in the order passed by the learned Principal District Munsif, Kuzhithurai. Accordingly, the order passed by the learned Principal District Munsif, Kuzhithurai in E.P.No.90 of 2014 in O.S.No.383 of 2010, dated 02.03.2017 is confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)



To

The Principal District Munsif,
Kuzhithurai.

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+1cc to Mr.G.Ramanathan, Advocate Sr.No.90601

+1cc to Mr.C.K.M.Appaji, Advocate Sr.No.90602

AKV

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