



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.R.P. (MD) .No.978 of 2017 (NPD)

1.Tmt.Srimathi
2.Shankaranainar ... Petitioners/Decree Holders/Plaintiff

Vs.

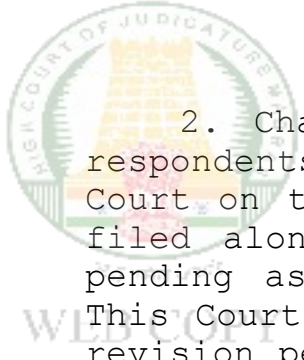
1.Ganesh Raja
2.Malai Raja ... Respondents/Judgment debtors/Defendants

Prayer: Petition is filed under Article 227 of the Constitution of India to direct the District Munsif Tirunelveli to dispose of E.P.No.117 of 2014 in O.S.No.538 of 2004 within a specified time as fixed by this Court.

For Petitioner : Mr.K.P.Narayanakumar

ORDER

The petitioners are the plaintiffs/decree holders and the respondents are the defendants/judgment debtors. The petitioners/plaintiffs filed a suit in O.S.No.281 of 1992 for dissolution of partnership, partnership account and to pay half of the share from the profits before the the Sub Court, Tirunelveli. Subsequently, it was renumbered as O.S.No.538 of 2004 and pending before the District Munsif Court, Tirunelveli. After trial, the Trial Court granted preliminary decree on 31.10.1995. Aggrieved against the said order, the respondents preferred an appeal before the Principal District Court, Tirunelveli as A.S.No.1 of 1996 and the same was dismissed on 16.03.1999 confirming the Trial Court order. Challenging the said judgment and decree, the respondents preferred a second appeal before this Court in S.A.No.260 of 2000 and the same was also dismissed vide judgment dated 25.01.2001. After the dismissal of the second appeal, final decree application was filed and final decree was also passed on 31.01.2013. Pursuant to the same, the petitioners filed E.P.No.117 of 2014 before the Principal District Court, Tirunelveli, in which the respondents entered appearance on 29.10.2014 and filed counter. Thereafter, the respondents not chosen to conduct the case despite several adjournments. While so, the respondents filed E.A.No.222 of 2015 to receive additional counter and the same was allowed on 19.06.2015. Even thereafter also on the next hearing dates, there was no representation on behalf of the respondents. Subsequently Execution Petition was allowed by passing order of attachment on



2. Challenging the order passed in E.A.No.222 of 2015, the respondents preferred C.R.P.(NPD)(MD).No.1480 of 2015 before this Court on the ground that against the final decree, an appeal was filed along with the condone delay application and the same is pending as I.A.No.78 of 2014 before the Sub Court, Tirunelveli. This Court vide order dated 21.07.2015 disposed of the said civil revision petition by directing the Subordinate Court to dispose of the application in I.A.No.78 of 2014 as expeditiously as possible not later than 21st August, 2015. By virtue of the order passed by this Court, the Subordinate Court, Tirunelveli, allowed the condone delay petition and the regular appeal was numbered and the same is pending as A.S.No.58 of 2015 and passed an interim order not to proceed with the Execution Petition till 24th August 2015. This Court in the above-said civil revision petition directed the Execution Court to proceed further depending upon the order passed by the first appellate Court in the appeal. Even though the appeal was numbered by the lower appellate Court, no stay was granted against the final decree passed by the Trial Court. In the above stated position, the petitioner filed the present civil revision petition for speedy disposal of the Execution Petition.

3. The learned counsel for the petitioners would submit that mere pendency of the appeal without any interim order, would not be a bar for the Trial Court to proceed with the Execution Petition and that was also found by this Court in C.R.P.(NPD)(MD).No.1480 of 2015. He would further submit that the suit was filed in the year 1992 and preliminary decree was passed as early as on 31.10.1995. Even after two decades, the petitioners have not enjoyed the benefit of the decree. Execution Petition has been adjourned periodically for production of stay order and the respondents are procrastinating the proceedings by filing application after application.

4. Considering the fact that the suit is filed originally in the year 1992 and order of attachment was passed as early as on 25.06.2015, this Court is inclined, to direct the Trial Court to dispose of the execution petition in order to meet the ends of justice. Accordingly, without advertting to the merits of the case, the District Munsif, Tirunelveli, is directed to dispose of the petition in E.P.No.117 of 2014 in O.S.No.538 of 2004, within a period of 8 weeks from the date of receipt of a copy of this order. The civil revision petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar(crl side)

/True Copy/



To

The District Munsif,
Tirunelveli.

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Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.P.Narayanakumar, Advocate Sr.No.84779

JIKR

VB/SV/MMS/SAR4/14/11/2017/3P/4C

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Order made in
C.R.P. (MD) .No.978 of 2017 (NPD)
31.10.2017