



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

C.R.P. (MD) .No.209 of 2016

and

C.M.P. (MD) No.896 of 2016

1. V.Karuppaiah

2. A.Anguchamy

...Revision Petitioners/ Respondents/
Defendants

Vs.

C.Muniyappan

...Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, as against the order dated 18.08.2015 in E.P.No.17 of 2015 in O.S.No.161 of 2007 on the file of learned District Munsif, Sivagangai.

For Petitioner : Mr.S.Srinivasa Raghavan

For Respondent : Mr.C.Muniyappan
Party-in-person**ORDER**

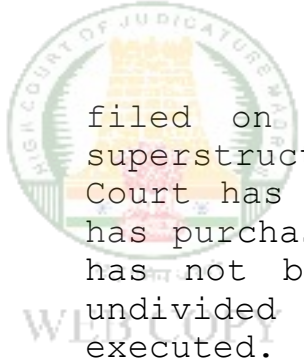
The Civil Revision Petition has been filed as against the order dated 18.08.2015 in E.P.No.17 of 2015 in O.S.No.161 of 2007 on the file of learned District Munsif, Sivagangai.

2. The revision petitioner/ judgment debtor filed the suit for mandatory injunction regarding the delivery of possession when the Execution Petition was pursuant to the decree passed in O.S.No.161/2007 as confirmed in A.S.No.41 of 2010, A.S.No.42 of 2010 and Second Appeal No.683 of 2011. The judgment debtor has taken out an application to dismiss the Execution Petition on the ground that he has preferred revision petition against the order passed in the S.A.No.683 of 2011 as well as he has also questioned the title of the decree holder to the entire extent of the property alleging that the decree holder is entitled only to 1/7th share.

3. The Execution Court after considering the submission made by the respective parties held that the judgment debtor herein has no right over the property and therefore, he cannot have claim on the superstructure what so ever on the suit property and dismissed the application.

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4. Aggrieved by that, the present revision petition has been



filed on the ground that without a decree of demolition of superstructure of possession cannot be executed and the Execution Court has failed to consider the fact that the first petitioner has purchased 1/7th share from one of the co-sharers and the same has not been taken out of without identifying the 1/7 share, undivided share of the revision petitioner, the decree cannot be executed.

5. This court after hearing the respondent on the earlier action found no merits in the revision petition. At this juncture, the learned counsel for the revision petitioner submitted that the matter may be referred to mediation for amicable settlement of the dispute. Taking this request, the matter was referred to mediation on 24.03.2017. The mediation centre has submitted report dated 07.04.2017 that on the first mediation session(today) only the respondent was present and the petitioner was absent, that the respondent has given a letter stating that he was unwilling of mediation, that the mediation could not succeed, and hence, this case is sent back to Hon'ble High Court.

6. The respondent appeared in person today and he circulated the order of the High Court dismissing review petition filed by the revision petitioner against judgment passed in Second Appeal No.683 of 2011. The review petition has been dismissed for non-prosecution. It is now clearly established that the revision petitioner herein has no merits to sustain the application filed before the Execution Court and the revision petition filed herein lacks bonafide and merits.

7. Hence, Civil Revision Petition is dismissed. The Execution Court is at liberty to proceed with the Execution Petition in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To
The District Munsif,
Sivagangai.

+1 cc to Mr.S.Srinivasa Ragavan , Advocate in SR.No. 51350
+1 cc to Mr.C.Muniyappan , Advocate in SR.No. 51359

SM/CP

AE/MMS/18.05.2017/2P/4C

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