

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.06.2018**

CORAM:

THE HONOURABLE MR.**JUSTICE P.VELMURUGAN**

C.R.P.(NPD) No.1259 of 2018 and
C.M.P.No.6486 of 2018

1. M.Damodharan
2. D.Usha Beulah
3. S.Arumugam
4. Pushpa
5. Santhanam
6. Muniammal
7. Lakshmi
8. Baskaran
9. Tamilselvan
- 10.Lurthubai
- 11.Maybalkarunabai
- 12.Pugalarasan
- 13.Dayalan

... Petitioners

Vs.

1. Chinnappan
2. Muthusubramani
3. Manonmani
4. Muthukumar
5. Madhankumar
6. Meenakshi
7. Venugopal
8. K.Varadharaj
9. K.Rajendran
- 10.Syed Abdul Raghuman

... Respondents

Civil Revision Petition has been filed under Article 227 of Constitution of India seeking direction to the District Munsif, Tambaram, to number the EA of 2018 in E.P.No.9 of 2016 in O.S.No.70 of 2015 on the file of the learned District Munsif, Tambaram.

For petitioners : Mr.R.Sankarasubbu
For Respondents: Mr.K.M.Venugopal for R1
RR2 to R10 given up

ORDER

This civil revision petition has been filed seeking direction to the learned District Munsif, Tambaram, to number the EA filed by the petitioners in E.P.No.9 of 2016 in O.S.No.70 of 2015.

2 The revision petitioners are defendants 1 to 10, 12, 17 and 18. The first respondent is plaintiff and respondents are defendants 11,13,14,15,16 & 19 to 22. The first respondent filed a suit in O.S.No.70 of 2015 on the file of the learned District Munsif, Tamabaram, for declaration and recovery of possession, which came to be decreed in favour of the plaintiffs by judgment and decree dated 10.12.2015. Subsequently, the first respondent initiated execution proceedings in E.P.No.9 of 2016, in which the revision petitioners were set exparte and delivery of possession has been ordered by order dated 12.04.2016. When the revision petitioners came to know about the eviction through police, who came to aid the amena sent by the Court for demolition of the construction put up by the petitioners, they had filed E.A.Nos.96 & 108 of 2017 to set aside the order of eviction

dated 12.04.2016 passed in the E.P.No.9 of 2016. The EP Court dismissed these applications by a common order dated 19.03.2018 stating that these applications are barred by limitation.

3 Thereafter the revision petitioners filed I.A.No.92 of 2018 under Section 5 of the Limitation Act, seeking to condone the delay of 641 days in filing petition to set aside the exparte order of eviction dated 12.04.2016, wherein notice was ordered returnable by 24.04.2018 and also filed E.A. /2018 seeking stay of the order of eviction. In the mean time, delivery of possession was ordered on 11.04.2018. The EP Court failed to consider the fact that the Section 5 application is pending seeking to condone the delay of 641 days in filing petition to set aside the exparte order of eviction dated 12.04.2016 and also returned the EA which has been filed seeking to stay the proceedings in E.P.No.9 of 2016 as not maintainable, which is contrary to law. Hence the revision petitioners are before this Court with the present revision petition.

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4 The learned counsel for the first respondent would submit that the petitioners herein are not challenged the decree which was passed in O.S.No.70 of 2015 by way of any appeal. The EP court

ordered delivery of possession after sending the notice to the revision petitioners. Now the revision petitioners come forward with the petition seeking stay of eviction order in order to protract the eviction proceedings. If at all the revision petitioners have any grievance, they should have challenged the decree passed the original suit itself by filing appeal.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 On a perusal of the records it reveal that the petitioners filed I.A.No.92 of 2018 under Section 5 of the Limitation Act, seeking to condone the delay of 641 days in filing petition to set aside the exparte order of eviction dated 12.04.2016, which is still pending and the trial Court returned the EA as not maintainable, which has been filed seeking to stay the proceedings in E.P.No.9 of 2016. The trial Court ought to have disposed of the application filed under Section 5 of the Limitation Act and then should have ordered for eviction.

7 In view of the above fact, the order for delivery of possession alone stayed that too till the disposal of the application filed

under Section 5 of the Limitation Act in I.A.No.92 of 2018. The EP Court is directed to dispose of the application in I.A.No.92 of 2018 within a period of one month from the date of receipt of a copy of this order and thereafter dispose of the EP proceedings in accordance with law.

8 With the above observations and directions, this civil revision petition is disposed of. Consequently connected miscellaneous petition is closed. No costs.

20.06.2018

Index:Yes/no
Internet : Yes/no

cgi

To
The District Munsif,
Tambaram.

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P.VELMURUGAN, J.,

cgi



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