

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD)No.198 of 2018 and
C.M.P.Nos.1119 & 4930 of 2018

1. Mahendran
2. Ganesan
3. Kesavan
4. Nagendran
5. Kannan
6. Alagammal

... Petitioners

Vs.

1. Renganathan
2. Kanthasamy Chettiyar
3. Nmgiri Ammal (died)

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.11.2017 made in E.A.No.111 of 2007 in E.P.No.68 of 1998 in O.S.No.5 of 1982 on the file of the learned Subordinate Judge, Dharapuram.

For Petitioners : Mr.A.S.Balaji

For Respondents : Mr.B.Eswaran

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ORDER

This civil revision petition has been filed against the order dated 04.11.2017 made in E.A.No.111 of 2007 in E.P.No.68 of 1998 in O.S.No.5 of 1982 by the learned Subordinate Judge, Dharapuram.

2 The first respondent filed a suit in O.S.No.5 of 1982 for partition,

which was decreed in favour of him by judgment and decree dated 14.09.1995. Subsequently the present respondents, who are legal representatives of the first respondent, have initiated execution proceedings in E.P.No.68 of 1998, wherein delivery was ordered on 08.09.2017. Accordingly some of the items have been taken delivery of possession and the respondents sought police aid for delivery of some properties which is said to have been the petitioners herein are in possession as tenants under one of the co-owners. The revision petitioners filed two applications in E.A.No.107 of 2017 to stay the delivery order and E.A.No.111 of 2017 has been filed by way of claim petition seeking to release the B Schedule properties in which they are in possession as tenants under one of the co-owners. The EP Court dismissed the same by order dated 04.11.2017.

3 Aggrieved against the above said order dated 04.11.2017, the revision petitioners are before this Court with the present revision petition.

4 The learned counsel for the petitioner would submit that the revision petitioners are in possession of the properties as tenant under one of the co-owners. The revision petitioners should not be evicted without any due process of law. The trial Court without giving any opportunity to the petitioners dismissed the applications as not maintainable.

5 The learned counsel appearing for the respondents would submit that the petitioners herein are in possession as tenants under one of the co-owners and they have no independent right to resist the delivery of possession.

Hence the petitioners herein without any legal right over the properties have protracting the execution proceedings by filing these applications.

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

7 On a perusal of the records, it is seen that the petitioners have filed two applications to stay the delivery order and to release the properties mentioned in the application from the delivery order, in which they are in possession as tenants. Since the petitioners herein are tenants, they have no independent right over the property to file claim petition and they have to agitate before their landlord only. Under these circumstances, this Court does not find any illegality or infirmity in the order dated 04.11.2017 passed by the EP Court.

8 In the result, the civil revision petition is dismissed. Consequently connected miscellaneous petitions are closed. No costs.

सत्यमेव जयते

28.06.2018

Index:Yes/No

Internet: Yes/No

Note: Issue order copy on 03.07.2018

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P.VELMURUGAN, J.,

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To

The Subordinate Judge, Dharapuram.



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