

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 26.03.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No.4668 of 2017

Kothandan

Petitioner

Versus

Durairajan

Respondent

Civil Revision Petition filed under Section 115 of C.P.C. Against the fair and decreetal order dated 29.11.2017 made in I.A. No.139 of 2017 in A.S. No.60 of 2017 on the file of the Subordinate Judge, Vellore, Vellore District.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.J.Karthikeyan

ORDER

This Civil Revision Petition is filed as against the order of dismissal, dated 29.11.2017, dismissing the I.A. No.139 of 2017 in A.S. No.60 of 2017 filed by the petitioner herein.

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2. A.S. No.60 of 2017 has been filed by the petitioner as against the order dated 10.10.2017 passed in E.A. No.42 of 2013 in E.P. No.72 in O.S. No.736 of 2007.

3. O.S. No.736 of 2007 has been filed by one L.N.Durairajan against one Duraisamy praying for a direction to pay a sum of Rs.2400/- being arrears of rent for 8 months. and for other relief.

4. The schedule described property in O.S. No.736 of 2007 is a premises bearing Door No.1/7A (New No.1/13), Old Police Station Street, Latteri Village, Katpadi Taluk, Vellore District.

5. In the said suit O.S. No.736 of 2007, an ex-parte decree dated 24.10.2008 was passed. Thereafter, E.P. No.72 of 2011 was filed. Pending the execution petition, the revision petitioner Kothandan filed E.A. No.42 of 2013 under Section 47 of CPC contending that the decree could not be executed. E.A. No.42 of 2013 came to be dismissed on 10.10.2017 against which A.S. No.60 of 2017 was filed before the appellate Court.

6. The Appellate Court dismissed the appeal, mainly on the ground that already the suit in O.S. No.1004 of 2009 was filed praying for a partition between the revision petitioner and one Durairaj. The said suit was decreed on 22.12.2014, as against which, A.S. No.9 of 2015 was filed before the Sub Judge, Vellore District and it was dismissed on 21.12.2016. The Second Appeal No.291 of 2017 preferred thereagainst by the revision petitioner herein also was dismissed by this Court on 20.04.2017. Relying on the judgment and decree passed by this Court in S.A.

No.291 of 2017, the trial Court dismissed the I.A. No.139 of 2017 for stay pending. Challenging the same, this Civil Revision Petition is filed.

7. According to the learned counsel for the revision petitioner, the suit in O.S. No.1004 of 2009 has nothing to do with the dispute involved in the execution petition filed by the revision petitioner. In the execution application, it was mainly contended that the revision petitioner was not a party to the suit. It is also contended that the possession of the property involved in the present suit viz., O.S. No.736 of 2007 vest with the revision petitioner and therefore any order passed therein will adversely affect possessory right of the revision petitioner. It is in those circumstances, the revision petitioner has filed the execution application under Section 47 of CPC specifically contending that the decree passed in O.S. No.736 of 2007 cannot be executed. The appellate Court without considering the above aspects has dismissed the I.A. No.139 of 2017 and it calls for interference by this Court.

8. The learned counsel appearing for the respondent contend that he was a decree holder in a suit in O.S. No.736 of 2007. The said suit was filed against Duraisamy for recovery of arrears of loan. In the said suit, a decree was passed and the decree was also confirmed by this Court in S.A. No.291 of 2017. The petitioner, who is a stranger to the suit property has no locus-standi to file the execution application under Section 47 of CPC. The first appellate Court considering the above aspects has rightly dismissed the application for interim stay. By virtue of the execution application, the respondent, who is a decree holder could not enjoy the

fruits of the decree and therefore, the learned counsel for the respondent prayed for dismissal of the revision petition.

9. Heard both sides and perused the materials placed on record. The revision petitioner has filed the I.A. No.139 of 2017 for stay pending, A.S. No.60 of 2017, which is impugned in this Civil Revision Petition, specifically contending that he is in possession of the property, which is the subject matter of the suit in O.S. No.736 of 2007. It is also the specific contention that he is in possession of the property involved in the suit in O.S. No.736 of 2007. Of course, the decree passed in O.S No.736 of 2007 attained the finality by virtue of the judgment passed in S.A. No. 291 of 2017. At the same time, when it is specifically contended by the revision petitioner that he was not a party to the suit, as well as the execution petition, by virtue of the decree passed in O.S. No.736 of 2007, he is sought to be dispossessed from the property. When that being so, the first appellate Court came to the conclusion that the possession of the revision petitioner is unlawful and he is not entitled to remain in possession of the property.

10. In other words, the appellate Court had traversed beyond the scope of the appeal interim application and rendered the finding as to the legality or otherwise of the possession of the revision petitioner. The fact remains that the first appellate Court while considering the Interim Application for grant of Interim Stay of all further proceedings in the execution petition ought to have rendered a finding as to whether the revision petition has made out a prima facie case for grant of interim stay or not. In the absence of the same, this Court is of the opinion that the order of

the first appellate Court cannot be sustained. At the same time, taking into account the fact that the suit filed in the year 2007 was decreed on 24.10.2008, which is sought to be executed by the respondent herein in the execution petition. This Court directs the first appellate Court to take up the appeal in A.S. No.60 of 2017 filed by the revision petitioner herein and to dispose of the same on merits and in accordance with law, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of the order. Accordingly, the order which is impugned in this revision petition is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

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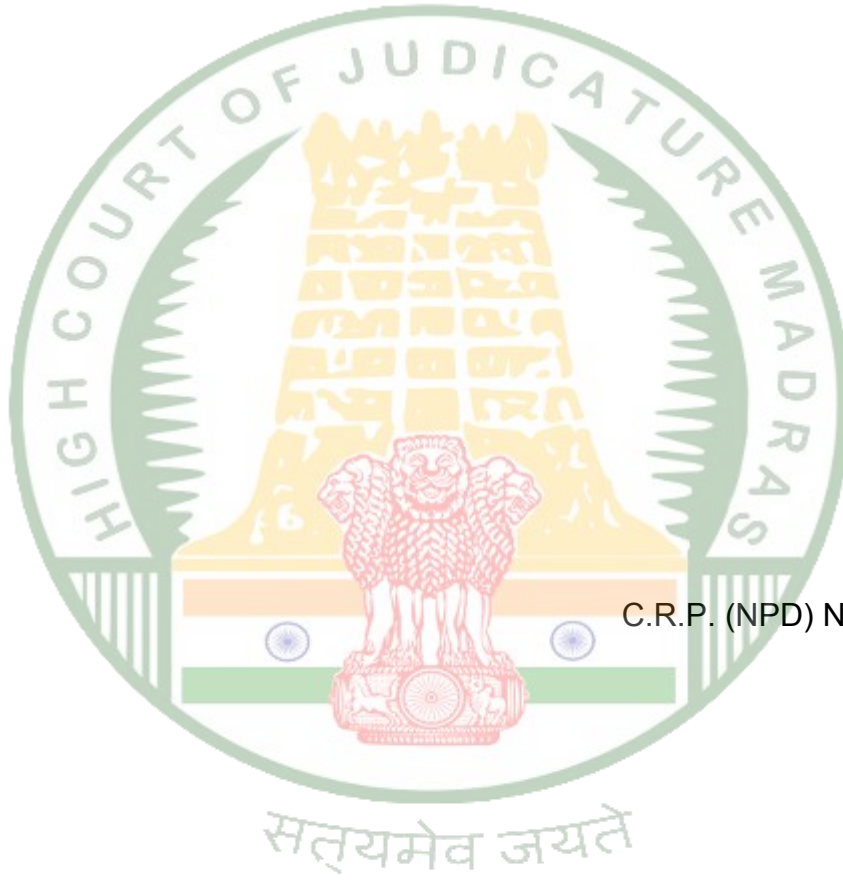
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To
The Subordinate Judge, Vellore, Vellore District.

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D.KRISHNAKUMAR, J.

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