



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2018

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.232 of 2018 (NPD)
and
CMP (MD) No.970 of 2018

1. Ananda Raj
2. Amirtha Raj ... Petitioners/Petitioners/Nil/Nil

Vs.

1.Sasidharan ... Respondent/Respondent/Petitioner/
Plaintiff
2.Murugappan ... Respondent/Respondent/1st Respondent/
1st Defendant
3.Velayudhan ... Respondent/Respondent/2nd Respondent/
2nd Defendant

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to call for the records relating to the impugned order dated 30.10.2017 made in unnumbered E.A.No.-- of 2017 in E.P.No.58 of 2016 in O.S.No.293 of 1983 (C.F.No.7527/2017 and 7892/2017) on the file of the Principal District Munsif, Kuzhithurai, set aside the same and allow this civil revision petition.

For Petitioner : Mr.H.Thayumanaswamy
For Respondents : Mr.M.P.Senthil, - for R1
for Mrs.J.Anandhavalli

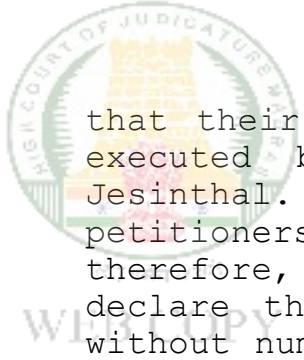
ORDER

This Civil Revision Petition has been filed challenging the rejection of unnumbered E.A.No.--- of 2017 in E.P.No.58 of 2016 in O.S.No.293 of 1983 on the file of the Principal District Munsif, Kuzhithurai, dated 30.10.2017.

2. Pending Exectuion Petition in E.PNo.58 of 2016, E.A.No.-- of 2017 has been filed to adjudicate the right of the petitioners and declare that the petitioners are the absolute owners and are in possession of the petition schedule property independent of the decree in O.S.No.293 of 1983 on the file of the District Munsif's Court at Kuzhithurai and dismiss E.P.No.58 of 2016.

<https://hcservices.ecourts.gov.in/hcservices/>

3. It is stated by the learned Counsel for the petitioners

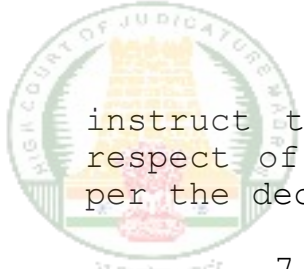


that their mother has got right of 10 cents as per the sale deed executed by one Velayudhan in favour of petitioners' mother Jesinthal. Now the decree holder attempted to disposses the petitioners from the building available on the alleged 10 cents, therefore, the petitioners resisted the decree holders and sought to declare their right in the suit property. But the Lower Court without numbering the petition, has rejected the same, aggrieved by which, this civil revision petition has been filed by the petitioners.

4. The learned Counsel for the first respondent would submit that the above application has been filed to adjudicate the claim of the petitioners in respect of the suit property alleging that they are third parties to the same. The petitioners are the children of the second defendant in the suit against whom decree for redemption has been passed. The petitioners' mother Jessinthal Mary filed a suit claiming right in the property and the suit was dismissed and confirmed upto Second Appeal in S.A.No.226 of 2006. Suppressing these facts, the petitioners have moved the application, as if they are third parties and as heirs of Jessinthal Mary claiming right over the property. The said application was rejected by the Court below and the rejection is based on merits of the contents of the application, wherein, the Court below had come to the conclusion on the face of the averments in the petition that the petitioners do not have any right in the property. The Trial Court, after considering the facts of the case in a proper perspective, rejected the Execution Application as not maintainable and the same does not warrant any interference.

5. This Court considered the submissions made by the learned Counsel on either side and also perused the materials available on record in the form of typed-set of papers.

6. A perusal of records shows that the suit has been filed for redemption of mortgage in the year 1983 and preliminary decree has been passed on 12.03.1992 and the suit was confirmed in A.S.No.52 of 1992 on 29.03.1994 and the Judgment and decree of the Courts below were confirmed in S.A.No.1247 to 1249 of 1994 on 21.02.2008 and final decree was passed on 10.02.2014. Execution Petition for delivery of possession was ordered on 25.04.2017. The petitioners' father challenged the order of delivery, which has been dismissed by this Court on 28.02.2017. The suit in O.S.No.272 of 1986 was filed by the petitioners' mother claiming right for an extent of 10 cents in the suit schedule, which was dismissed and confirmed in the Second Appeal and now the present petition filed in unnumbered E.A.No.--- of 2017 was filed by the petitioners herein, who are the sons of said Jesinthal mary. The present application in my considered opinion is a clear abuse of the process of the Court and the learned Judge has rightly rejected the application as not maintainable. The learned Counsel for the petitioner submitted that there are more than 22 cents in the suit schedule properties. While taking possession, the learned Trial Judge is directed to



instruct the Bailiff that the delivery has to be taken only in respect of the suit schedule property, which is about 22 cents as per the decree and not more than that.

7. With the above observation, the Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Kuzhithurai,

+ 1 CC TO M/s.J.ANANDHAVALLI, ADVOCATE IN SR No. 47707
+ 1 CC TO Mr.H.THAYUMANAVASWAMY, ADVOCATE IN SR No. 48581

RM
TE/CVC/SAR-1 : 27/02/2018 : 3P/4C

C.R.P (MD) No.232 of 2018 (NPD) and
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12.02.2018