



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

C.R.P. (MD) Nos.957 and 958 of 2018
and
C.M.P. (MD) No.4220 of 2018

1.G.Dayalan
2.D.Ezhilarasan
3.Elavarasan
4.Angayarkanni

... Petitioners/Petitioners/
Third Parties/Third Parties/Third Parties
in both petitions

Vs.

1.Rajadurai Padiandavar

... Respondent/Respondent/
Respondent/Petitioner/Plaintiff
in both petitions

2.Ramakrishnan

... Respondent/Respondent/
Respondent
in both petitions

3.Dhanalakshmi

... Respondent/Respondent/
Respondent/3rd Defendant
in both petitions

4.Patturoja
5.Karthikeyan
6.Ramesh
7.Valarmathi
8.Vaithiyanathan
9.Devi
10.Aruna

... Respondents/Respondents/
Respondents/Respondents/3rd party's
in both petitions

COMMON PRAYER:- Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure against the order and decree passed, dated 22.12.2017 made in E.A.Nos.84 and 85 of 2017 in E.A.No.19 of 2012 in E.P.No.11 of 2002 in O.S.No.31 of 1983, on the file of the Additional Subordinate Court, Kumbakonam.



WEB COPY

For Petitioners
in both petitions : Mr.G.Gomathi Sankar

For Respondents
in both petitions : Mr.R.Vijayakumar
for R.1

COMMON JUDGMENT

Challenging the fair and final order passed in E.A.Nos.84 and 85 of 2017 in E.A.No.19 of 2012 in E.P.No.11 of 2002 in O.S.No.31 of 1983, on the file of the Additional Subordinate Court, Kumbakonam, the third parties have filed the above Civil Revision Petitions.

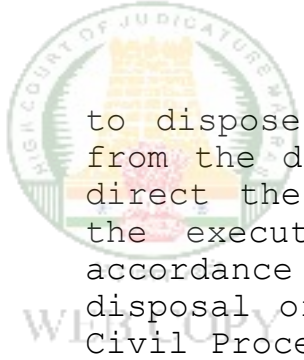
2. The plaintiff filed the suit in O.S.No.31 of 1983 for recovery of possession and mesne profits and obtained a decree for recovery of possession as against the defendants in A.S.No.86 of 1992, on the file of this Court, dated 24.02.1999. Pursuant to the decree passed by this Court, the plaintiff filed an execution petition in E.P.No.11 of 2002 for executing the decree. In the said execution petition, the mother of the revision petitioners viz., Rajalakshmi, filed an application in E.A.No.19 of 2012 under Section 47 of the Code of Civil Procedure. The said application is being contested by the decree holders. After the completion of the oral evidence let in by the revision petitioners, they filed applications in E.A.No.84 of 2017 to re-open the application for letting further evidence and E.A.No.85 of 2017 seeking for appointment of Advocate Commissioner.

3. The application in E.A.No.19 of 2012 was filed by the mother of the petitioners as early as in the year 2012. After a lapse of five years, the present applications were filed by the petitioners seeking to re-open the application for letting further evidence and seeking for appointment of Advocate Commissioner.

4. It is a settled position that the Advocate Commissioner cannot give a finding with regard to the possession of the parties. Admittedly the suit was filed by the plaintiff only for recovery of possession and mesne profits. Therefore, the present applications filed at a belated stage were rightly dismissed by the executing Court.

5. In these circumstances, I do not find any error or irregularity in the order passed by the executing Court. The Civil Revision Petitions are devoid of merits and the same are dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

6. Since the application in E.A.No.19 of 2012 is pending from the year 2012, I direct the Additional Subordinate Judge, Kumbakonam



to dispose of the said application within a period of four weeks from the date of receipt of a copy of this order. Further I also direct the Additional Subordinate Judge, Kumbakonam to dispose of the execution petition in E.P.No.11 of 2012 on merits and in accordance with law within a period of eight weeks from the date of disposal of the application filed under Section 47 of the Code of Civil Procedure.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Kumbakonam.

+ 1 CC TO Mr.G.GOMATHI SANKAR, ADVOCATE IN SR No. 67023
+ 1 CC TO Mr.R.VIJAYAKUMAR, ADVOCATE IN SR No. 67050

SSL

TE/SV-MMS/SAR-3 : 12/06/2018 : 3P/4C

C.R.P. (MD) Nos.957 and 958 of 2018 and
C.M.P. (MD) No.4220 of 2018
05.06.2018