



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (NPD) (MD) No.1023 of 2017

and

C.M.P. (MD) No.4581 of 2017

Jebasthial Kannan

...Petitioner/Respondent/ Plaintiff

-vs-

Muppidathi (died)

1.Sudalaivadivoo

2.Esakkimuthu

3.Arunachalam

... Respondents / Petitioners/Defendants

PRAYER: Civil Revision Petition filed under Article 115 of CPC praying to set aside the fair and decreetal order passed in E.P.no.174 of 2013 in O.S.No.595 of 2009 on the file of the Principal District Munsif Court, Tirunelveli dated 26.04.2017 and allow the Civil Revision Petition.

For Petitioner : Mr.N.GA.Natraj

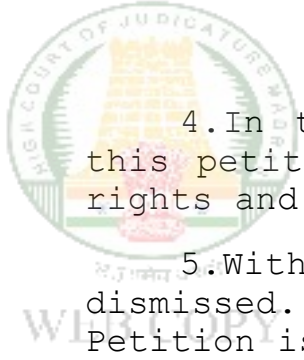
For Respondents : Mr.T.Selvan

ORDER

The revision petitioner is the plaintiff in O.S.No.595 of 2009 on the file of the Principal District Munsif Court, Tirunelveli. It is a suit for permanent injunction. In the said suit, the respondents / defendants filed counter claim for injunction as well as mandatory injunction. While the relief sought for by the plaintiff / revision petitioner was dismissed, the counter claim was allowed in respect of mandatory injunction.

2.Questioning the same, this Revision petitioner filed first appeal and the same was dismissed. Thereafter, the revision petitioner filed SA (MD)No.183 of 2014. It is still pending before this Court.

3.The only remedy open to the petitioner is to prosecute his interim application in the pending second appeal and obtain interim order in his favour as the decree passed in favour of the respondent herein has not been stayed or set aside. The respondents are entitled to execute the same and therefore the executing Court is justified in entertaining E.P No.174 of 2013. Hence, challenging the maintainability of the execution petition by citing the pendency of the second appeal does not arise.



4. In this view of the matter, this Court finds no merit in this petition. It is for the revision petitioner to workout his rights and remedies in the pending second appeal.

5. With this observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-I)

To:
The Principal District Munsif,
Tirunelveli.

+1cc to Mr.T.Selvan, Advocate Sr.No.79539

TA

VB/SKN/SAR1/27.09.2018/2P/3C

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