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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.01.2018

DELIVERED ON : 09.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD)No.2630 of 2017

and

C.M.P. (MD)No.12090 of 2017

Abdulhameed : Petitioner / Respondent /
Defendant

vs.

Mohammed Abdullah (Died)

1.Jamal Mohammed

2.Kairunnisa

3.Ghulam

4.Jannath Begam

5.Abdul Salam

: Respondents / Petitioners /
Plaintiffs

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 15.12.2017 made in E.P.No.33 of 2015 in O.S.No.209 of 2001 on the file of the District Munsif Court, Manapparai.

For Petitioner : Mr.Karthick Subramanian

For Respondents : Ms.B.Prahalad Devi

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned District Munsif, Manapparai in E.P.No.33 of 2015 in O.S.No.209 of 2001 dated 15.12.2017.

2. The facts of the case are that the respondents herein, as plaintiffs, have instituted a suit in O.S.No.209 of 2001 on the file of the District Munsif Court, Manapparai seeking the relief of declaration and permanent as well as mandatory injunction against the petitioner herein/defendant. The said suit was partly allowed, against which, the respondents herein have preferred an appeal in A.S.No.196 of 2011, which was allowed as prayed for. Aggrieved over the same, the petitioner herein has preferred a second appeal in S.A.(MD)No.SR35467 of 2016. In the meanwhile, the respondents have filed execution petition in E.P.No.33 of 2015, based on the decree and the same was allowed, thereby eviction and delivery were ordered. Aggrieved over the same, the present civil revision petition came to be filed.

3. Narrating the events that took place, the learned Counsel for the petitioner would submit that "Appeal is continuation of Trial" and despite a memo regarding the pendency of second appeal was filed before the Court below, the Executing Court has ordered eviction and re-delivery, based on the application of the respondents.



4. The learned Counsel for the petitioner would submit that the respondents want to cause damage to the house of the petitioner. He would further contend that the respondents had sought for delivery based on the commissioner report, which was not accepted by the trial Court, but, the Appellate Court without appreciating the arguments, reversed the finding of the trial Court. Therefore, according to the petitioner, he has arguable points to put forth his case in the second appeal and the Executive Court ought not to have entertained the execution petition filed by the respondents. Hence, he seeks interference of this Court in the impugned order and to allow the present revision petition.

5. The learned Counsel appearing for the respondents, on the other hand, would vehemently contend that only to drag on the proceedings, the petitioner has filed the present petition. The order passed by the learned Appellate Judge is a well considered order. Now, knowing fully well that he cannot succeed in the second appeal, the petitioner has filed the appeal with a delay of 1076 days, which is still in SR stage and therefore, the learned Counsel for the respondents prayed for dismissal of the Civil Revision Petition.

6. Heard the learned Counsel appearing for the petitioner as well as the learned Counsel appearing for the respondents and perused the documents placed on record.

7. Perusal of the record shows that the petitioner has filed the above second appeal with the delay of 1076 days and even today, the petitioner has not taken any steps to number the second appeal which would go to show that he is not interested in prosecuting the appeal. The respondents cannot wait for years together to enjoy the fruits of the decree passed by the Appellate Court. If the petitioner is really aggrieved over the impugned order passed by the Executing Court, he would have taken immediate steps to number the second appeal.

8. Considering the facts and circumstances of the case, in my considered opinion, there is no infirmity in the impugned order passed by the learned Judge. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar



To

The District Munsif,
Manappārai.

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+1cc to Mr.KARTHICK SUBRAMANIAN, Advocate, SR.No.54774

+1cc to Mr.J.MUNEER KHAN, Advocate, SR.No. 54881

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09.03.2018

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