



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.1176 of 2016 (PD)
and
CMP (MD) No.5774 of 2016

S.Alagu Meenal

... Revision Petitioner/Plaintiff

Vs.

1.R.M.Sivaji

V.Sivaraj (died)

2.M.Ramasamy Ambalam

3.S.Jothi

4.S.Sakthi Meiyappan

5.S.Chitradevi

6.S.Koppathal

... Respondents/Defendants

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the Execution Petition in E.P No.14 of 2016 on the file of the District Munsif Court, Karaikudi.

For Petitioner : Mr.P.Arun Jayatram

For Respondents : Mr.R.G.Shankar Ganesh

ORDER

The plaintiff in O.S No.596 of 1989 on the file of the District Munsif Court is the revision petitioner herein. It was a suit for bare injunction. The suit was dismissed. Questioning the same, A.S No.97 of 1992 was filed before the Sub Court, Devakottai. It was also dismissed on 30.11.1994. Thereafter, S.A No.512 of 1995 was also filed by the revision petitioner herein before the Principal Bench of this Court. It was subsequently transferred to this Bench. The same was also dismissed for default originally and it has now been restored. During the pendency of the Second Appeal, the respondents herein filed a revision petition in CMP No.598 of 1996. A learned Judge of this Court who heard the said CMP, on 23.01.1996, passed the following order :



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"Now, the petitioners herein filed this petition restraining the respondent from putting up any construction. In the plaint it has been stated that the plaintiff had already put up a house. Hence, in case, if any repair or any additions to be made for the house, having enjoyment of the suit property he may have to do it. As there is an order of interim injunction restraining the petitioners herein from interfering with the peaceful possession and enjoyment of the property. I am of the view that this application has been filed only to cause inconvenience to the respondent from enjoying the property. Whatever is done by the respondent will be subject to the result of the appeal. Hence, in case, if the petitioner succeeds in the appeal, the respondent has to remove the superstructure and hand over possession. The rights of the petitioners will not be prejudiced in any manner. Hence, the miscellaneous petition is dismissed."

2. Since an observation was made that if the second appeal is dismissed, the plaintiff will have to remove the superstructure and hand over the possession, in view of the dismissal of the second appeal, the present execution petition came to be filed. Since the second appeal has been subsequently restored to file, continuation of the execution petition is not tenable. The District Munsif, Karaikudi is directed to strike off the Execution Petition in E.P No.14 of 2016.

3. Accordingly, this petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/TRUE COPY/

Sub Assistant Registrar (CS-I)

To

The District Munsif, Karaikudi.

+1. C.C. to M/S.P. Arun Jayatram, Advocate SR.No. 81806

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