



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (NPD) (MD) No.1470 of 2016

and

C.M.P. (MD) No.7196 of 2016

P.Balammal ... Petitioner/Petitioner/3rd Party, Claimant
/ 3rd Party

-vs-

1.E.Shanthi ... 1st Respondent / 1st Respondent
/ Petitioner / Decree Holder / Plaintiff

2.P.Rajapandi ... 2nd Respondent / 2nd Respondent
/ 1st Respondent / Judgment Debtor /
1st Defendant

S.Perumal Naidu (died)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the second returned order dated 04.07.2016 passed in unnumbered E.A. Of 2016 in E.P.No.2 of 2014 in O.S.No.8 of 2011 on the file of the Additional District and Sessions Judge, Dindigul and direct the Execution Court, (Additional District and Sessions Judge, Dindigul) to number the claim / Obstruction Petition and dispose the same within a stipulated time.

For Petitioner : Mr.V.Meenakshisundaram

For Mr.D.Nallathambi

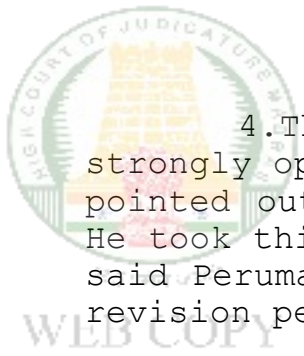
For R1 : Mr.V.R.Venkatesan

For R2 : No Appearance

ORDER

The first respondent in the Civil Revision Petition is the plaintiff in O.S.No.8 of 2011 on the file of the learned Additional District and Sessions Court, Dindigul. It was a suit for specific performance.

2.The case of the plaintiff was that the second respondent herein executed a sale agreement in her favour and that he did not come forward to execute the sale deed. The second respondent had purchased the suit property from one Perumal Naidu in the year 2005. The first respondent herein in order to execute the decree granted in her favour dated 04.06.2012 filed E.P.No.2 of 2014. In the said E.P.No.2 of 2014, the revision petitioner herein filed E.A., under Order 21 Rule 97 C.P.C.. The same was not numbered and returned. Since the revision petitioner was of the view that the re-submission of the returned E.A., will only be a futile exercise, this Civil Revision Petition came to be filed.



4.The learned counsel appearing for the first respondent strongly opposed the claim made in this Civil Revision Petition. He pointed out that the hands of the revision petitioner are unclean. He took this Court to the sale deed dated 11.07.2005 executed by the said Perumal Naidu in favour of the second respondent, in which the revision petitioner herein had attested the document.

5.It is true that the said Perumal Naidu died during the pendency of the suit proceedings. The first respondent took steps to implead the revision petitioner as legal representative of the said Perumal Naidu. Interestingly, the revision petitioner herein filed her counter opposing I.A.No.205 of 2011 filed by the first respondent herein for impleading the revision petitioner. The Court below dismissed the I.A.No.205 of 2011 filed by the first respondent for impleading the revision petitioner on 10.11.2011. Therefore, the first respondent wanted this Court to take note of the complete lack of bona fide on the part of the revision petitioner and dismiss the Civil Revision Petition.

6.Though the submissions made by the learned counsel for the first respondent carry considerable force, this Court is of the view that the effect of the order dated 10.11.2011 in I.A.No.205 of 2011 in O.S.No.8 of 2011 is that the revision petitioner was not a party to the original suit proceedings. Even according to the revision petitioner, she is in possession of the property. Therefore, there is bound to be obstruction from her to the execution of the decree in question. Therefore, the first respondent will have to file a petition under Order 21 Rule 97 C.P.C., to remove the obstruction created by the revision petitioner.

7.The learned counsel for the first respondent expressed his apprehension that this would contribute to further delay in concluding the proceedings. Therefore, to alleviate the fears of the first respondent, this Court even while directing the Executing Court to number the said E.A filed by the revision petitioner and take it on file, directs the Executing Court to conclude the entire enquiry within a period of four weeks from the date of receipt of a copy of this order, if necessary, by conducting the enquiry on day to day basis. It is needless to mention that this Court has not gone into the merits of the matter.

8.With this direction, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/



To

1. The Additional District and Sessions Judge,
Dindigul.

2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+1CC to Mr.D.Nallathambi, Advocate, SR.No.78100

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MYR

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