



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2018

CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD).No.2618 of 2016

V.Rajayyan Robin @ Thangappan ... Revision Petitioner/
1st Respondent/Petitioner/
Plaintiff

Vs.

1. S.Suseelai ... 1st Respondent/Claim Petitioner/
Not as party

2. R.Esther Wilsy
3. Chellayyan
4. C.Gabrilla
5. V.Thankasamy
6. T.Kamal Anand Chaudhary
7. V.Muthamma
8. A.Ammukutty @ Mary (died)
9. Kuzhilal
10. Rajaram
11. Rexilin Jikki
12. Shirley

... Respondents/Respondents

(The petitioner is the only affected person by this claim petition. So all other respondents are not necessary in the Civil Revision petition. Hence, their names are not printed in the cause title. The claim petition under challenge itself is filed to get over the order of this Court in C.R.P. (NPD) (MD) No.2103 of 2015, dated 22.04.2015, necessitating this Civil Revision petition.)

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to allow this Civil Revision petition and set aside the order and decretal order dated 07.10.2016 in E.A.No.290 of 2015 in E.P.No.35 of 2013 in O.S.No.136 of 2002 on the file of the Principal District Munsif Court, Kuzhithurai.

(The prayer is substituted vide order dated 21.02.2017 made in C.M.P. (MD) No.1682 of 2017)



For Petitioner : Mr.T.S.R.Venkataramana
For R-1 : Mr.S.Titus
For R-10 & R-12 : Mr.P.S.Ganesan
For R-2 to R-9 &
R-11 : Given up.

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O R D E R

The Revision petitioner is the plaintiff in O.S.No.136 of 2002 on the file of the learned Principal District Munsif, Kuzhithurai. It is a suit for partition. Decree was passed in favour of the Revision petitioner herein on 16.07.2009. Both the preliminary decree as well as the final decree have been passed in the said suit. To enforce the same, E.P.No.35 of 2013 was filed before the Principal District Munsif Court, Kuzhithurai. In the said execution petition, the first respondent herein filed a claim petition in E.A.No.290 of 2015. The Court below by order dated 07.10.2016, has passed the following order:-

" 2. On careful perusal of all records, it would be seen that with regard to E.P. schedule property and larger extent, an A.S.No.29 of 2015 is pending before the Honourable Subordinate Court, Nagercoil, for the same schedule of property and therefore this Court feels that the outcome of A.S.29 of 2015 would have bearing in this E.P., also, eventhough it is not specifically established that the claim petition is directly having right in E.P. schedule property.

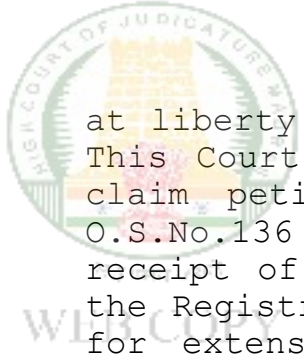
3. Therefore, to avoid further complication and multiplicity of proceedings, in the interest of justice, this Court is not inclined to pass any order in this application at this state, and therefore, order will be kept in Abeyance till the disposal of A.S.No.29 of 2015, call on 02.11.2016."

This order is questioned in this Civil Revision petition.

2. Heard the learned counsel on either side.

3. This Court is of the view that when a claim petition has been filed before the Executing Court, the Court below ought to take a call in the matter one way or the other. Adjourning the execution proceedings indefinitely till the disposal of the another appeal where there is no stay, cannot be said to be a correct approach.

4. In this view of the matter, the order impugned in this Civil Revision petition is set aside. It is made clear that this Court has not gone into the merits of the matter. The parties herein are



at liberty to canvass their contentions before the Executing Court. This Court strictly directs the Executing Court to dispose of the claim petition in E.A.No.290 of 2015 in E.P.No.35 of 2013 in O.S.No.136 of 2002 within a period of four weeks from the date of receipt of a copy of this order and submit a compliance report to the Registry in this regard. It is made clear that no application for extension of time either from the Court below or from the parties will be entertained.

5. With these observations, the Civil Revision petition stands allowed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Principal District Munsif,
Kuzhithurai.

Copy to:

- 1.The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.
- 2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)
- 3.The Section Officer,The Judicial Posting,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.T.S.R.VENKAT RAMANA ADVOCATE IN SR.No.83599.

+1CC TO MR.S.TITUS ADVOCATE IN S.R.NO.83792.

PMU
DS SV SAR-1:17.09.2018: 3P/8C

C.R.P. (MD) .No.2618 of 2016
05.09.2018