



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Second Appeal No.180 of 2019
and
C.M.P.No.3170 of 2019

1. Kutty @ Babu
2. Renu
3. Nadarajan
4. Venkatesan
5. Ambiga
6. Venda
7. Meera
8. Saravanan
9. Balaji
10. Baskaran
11. Dass

... Appellants/Defendants

Vs.

1. S.Selvaraj
2. S.Murugesan
3. Vijaya
4. Santha
5. Latha
6. Malliga
7. Govindan
8. Elumalai
9. Ammu

... Respondents/Plaintiffs

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the fair and decreetal order made in A.S.No.65 of 2015 dated 31.10.2018 of the Principal Sub-Court , Vellore, Vellore District confirming fair and decreetal order dated 05/08/2015 made in E.A.No.4/2010 in E.P.No.251/98 in O.S.No.2479/79 on the file of Additional District Munsif Court, Vellore.

For Appellants
For respondents

: Mr. P.S.Kothandaraman
: Mrs.N.Mala



JUDGEMENT

The appellants, who are legal heirs of the judgment Debtor, filed an application under Order 21 Rule 97 CPC. The first appellant herein is the third defendant in the original suit. The appellants 2 to 4 are the legal heirs of the first defendant and the appellants 5 to 11 are the legal heirs of the second defendant.

2. Earlier the respondents herein filed a suit in O.S.No.2479 of 1979 on the file of the District Munsif Court, Vellore, against the predecessors of the appellants 2 to 11 and the first appellant for declaration and recovery of possession and the suit has been decreed by judgment and decree dated 24.12.1981. Aggrieved by the same, the defendants filed an appeal in A.S.No.9/1982 on the file of the Sub-Court, Vellore and the First Appellate Court by judgment and decree dated 28.08.1982 dismissed the appeal. Ultimately, the Second Appeal filed by the defendants before this Court was also came to be dismissed on 04.04.1996.

3. Thereafter, when the plaintiffs levied execution, the appellants herein filed an application under Order 21 Rule 97 CPC in E.A. No. 4 of 2010, and that application has been dismissed by the Execution Court on 05.08.2015. Challenging the same, they have filed an appeal in A.S.No.65 of 2015, on the file of the Principal Subordinate Court, Vellore. The First appellate Court after elaborately considering the materials available on record, dismissed the appeal on 31.10.2018. Now, challenging the above judgment and decree, the present appeal has been filed.

4. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the materials available on record.

5. It is an admitted case that the suit has been decreed in favour of the respondents, and against the appellants predecessors, which was also ultimately confirmed by this Court. Earlier, Similar application filed by some of the appellants and their predecessors under Order 21 Rule 97 CPC was also dismissed by the Execution Court and that was also confirmed in the appeal. That being the possession, now it is not open to the appellants to file another application raising the very same plea, which is nothing, but an abuse of process of law. The respondents, who have obtained a decree in the year 1981, for



nearly 38 years could not able to execute the decree, because of this kind of vexatious litigations. Both the Courts below after considering the entire materials concurrently held that the appellant cannot maintain this application and there is no merit in it. I find no illegality or perversity in the judgment of the Courts below and no substantial question of law arises for consideration in this second appeal.

6. In the result, the second appeal is dismissed and the decree and judgment of the First Appellate court confirming the fair and decreetal order of the Execution Court is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Vellore
2. The Additional District Munsif,
Vellore

+lcc to Mr.P.S.Kothandaraman, Advocate sr.16371
+lcc to Ms.N.Mala, Advocate sr.1674

S.A. No.180 of 2019

nr 11.12.2019