

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

C.R.P.No.4000 of 2011

and

M.P.No.1 of 2011

K.Jayabalan ...Petitioner /Defendant

Vs

K.Vasanthan ...Respondent /Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the Order and Decree made in E.A.No.375 of 2008 in O.S.No.60 of 2000 on the file of the 1st Additional Subordinate Judge, Cuddalore dated 18.03.2011.

For Petitioner : Mr.K.A.Ravindran

For Respondent :Mr.I.Abrar Md Abdullah

ORDER

This Civil Revision Petition has been filed as against the order of the executing Court in ordering the delivery of the property.

2.The suit has been originally decreed on 01.03.2002 for specific performance and thereafter, the decree holder has filed an application for delivery of the property. The only ground raised by the respondent was that since he has filed an application to set aside the exparte decree with a delay of 2425 days, the delivery cannot be ordered. However, the executing Court has ordered the delivery of the property as against which the present revision has been filed.

3.I have perused the records and order of the trial Court. The decree passed by the competent Court which has been sought to be executed cannot be stopped merely on the ground that the Judgment debtor has filed an application to set aside the exparte decree with a huge delay of 2425 days. Mere filing of

such application will not amount to automatic stay of the decree and Judgment and moreover, that cannot stand as a reason for resisting the execution of the decree.

4.If at all, the Judgment debtor succeeds in the application and the exparte decree is set aside and in the event of succeeding in the suit, she can very well file an application for restitution under Section 144 of the Civil Procedure Code. Hence, I do not find any error or illegality in the order passed by the trial Court.

4.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

ay

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To
The I Additional Subordinate Court,
Cuddalore.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

सत्यमेव जयते

C.R.P.No.4000 of 2011
and

M.P.No.1 of 2011

Kak(13/05/2019)

WEB COPY