

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.3181 of 2013 &

M.P.No.1 of 2013

Mrs.Kannammal

.. Petitioner

Vs.

Mrs.Dhanalakshmi @ Santhi

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal Order of the learned I Additional Subordinate Judge, Cuddalore in allowing E.P.No.121 of 2007 in O.S.No.331 of 1990 dated 05.10.2010.

For Petitioner : Mr.R.Gururaj

For Respondent : No appearance

ORDER

Aggrieved over the Order passed by the Execution Court Ordering delivery of possession, the present revision came to be filed.

The brief facts leading to the filing of the revision is as follows :

The respondent has filed the suit in O.S.No.331 of 1990 for declaration and recovery of possession. The suit was decreed in his favour. The first appeal filed in A.S.No.29 of 1996 against the above decree and judgment has also been dismissed on 18.08.1997. Therefore, the decree holder has filed an application in E.P.No.121 of 2007 for execution on 18.09.2007. The Execution Court ordered delivery of possession as against which the present revision has been filed.

The main contention of the revision petitioner is that at the time of admitting the first appeal, there is no stay granted by the first appellate Court and nothing prevented the decree holder for filing execution application at the earlier point of time. Therefore, the execution petition is barred by limitation. Another contention of the revision petitioner is that a third party has obtained a decree and in respect of which a second appeal is also pending before this Court. Hence, possession ought not to have been Ordered by the trial Court.

Heard the learned counsel for the revision petitioner. There is no representation for the respondent and perused the entire materials available on record.

At the thrushhold, I cannot accept the contention of the learned counsel for the simple reason that the appeal is a continuation of the suit which has been dismissed in the year 1997 which is not in dispute and execution has been filed within 12 years from the date of decree by the appellate Court. Therefore, the contention that since there is no stay granted by the appellate Court, the execution petition filed after the dismissal of the appeal is time barred, has no legs to stand. Similarly, his contention that a third party had also obtained a decree in respect of which a second appeal is pending, therefore, the suit property cannot be delivered, also has no legal basis. It is for the subsequent decree holder to work out his remedy as per law. Therefore, the same will not disentitle the decree holder to execute the decree. Hence, there is no merits in this revision petition.

6. Accordingly, this Civil Revision Petition is dismissed and the Order of the Court below is confirmed. Consequently, the connected miscellaneous petition is closed. No cost.

13.02.2019

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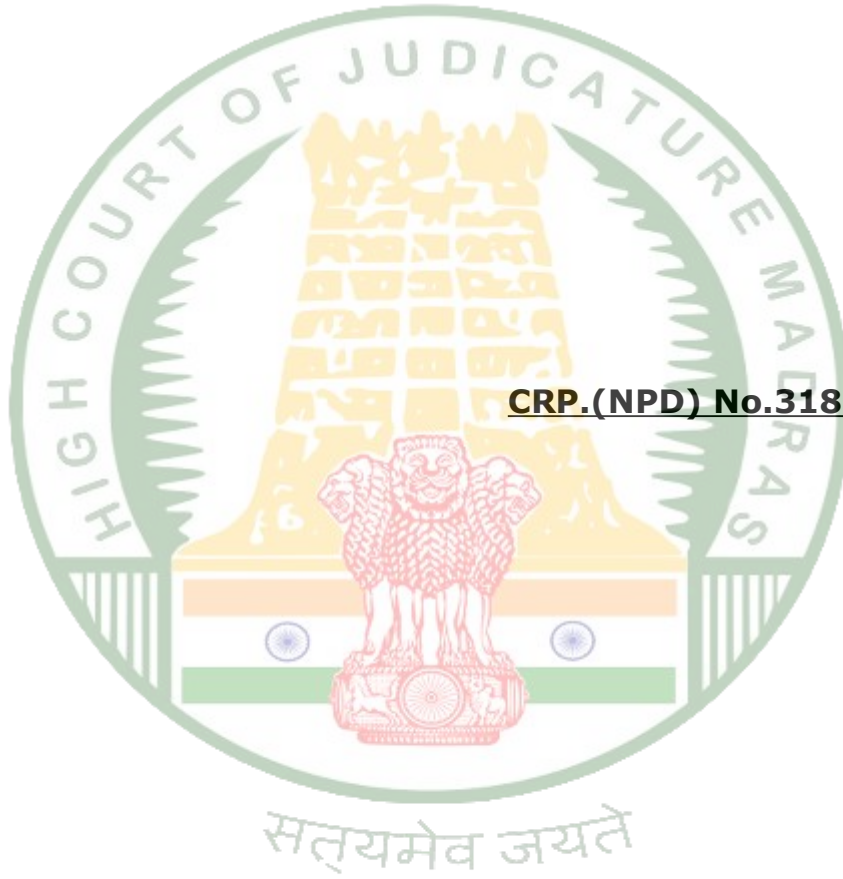
To

The I Additional Subordinate Judge,
Cuddalore

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N.SATHISH KUMAR, J.

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