

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. NPD 3958 of 2019
and
C.M.P. 26095 of 2019

1. K.Raja
2. P.Muniammal

... Petitioners

Versus

1. S.Sayath Yusuf
2. S.Sayath Beer
3. S.Usuf Latheep
4. S.Yusuf Ashif

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the order and decretal order in R.E.P.No. 20 of 2014 in O.S.No.94 of 2012, on the file of District Munsif Court, Palacode, dated 26.11.2018.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.V.R.Annagandhi

ORDER

This Civil Revision Petition has been filed against the order of attachment.

2. The respondents herein filed a suit for recovery of possession in O.S. 94 of 2012 on the file of District Munsif Court, Palacode. The petitioners herein have also filed a suit in O.S.196 of 2011, for permanent injunction. The suit filed by the respondents was decreed. Challenging the judgment and decree in O.S. 94 of 2012 for recovery of possession, the petitioners have filed an appeal in A.S. 31 of 2018 on the file of Sub-Court, Dharmapuri, and no interim order was granted in the appeal. Now, pending appeal, the respondents herein levied execution, and the Execution Petition was ordered. Against that order, the present Civil Revision Petition has been filed.

3. Mr.V.Raghavachari, learned counsel appearing for petitioners submitted that, even though the petitioners have filed an appeal in the year 2015, the appeal is not so far disposed of. Pending appeal, the Execution Petition has been allowed. Now, the 3rd respondent is taking steps to take possession .

4. Per contra, the learned counsel appearing for respondents would submit that, even though the appeal was filed in the year 2018, the respondents have not taken any steps to get the judgment and decree passed by the lower court stayed, in that circumstances, the E.P. has been ordered.

5. I have heard and considered rival submissions made by learned counsel appearing for petitioners as well as learned counsel appearing for respondents, and perused the records carefully.

6. Considering the fact that, the decree is for recovery of possession, and challenging the same, an appeal is pending. Pending appeal, if possession is taken, the appeal will become infructuous. In the above circumstances, I am inclined to direct the Sub-Court, Dharmapuri to dispose the appeal filed by the petitioners in A.S. 31 of 2018 within a period of six weeks from the date of receipt of the copy of this order. Till the appeal is disposed of, the Execution Court, viz., District Munsif Court, Palacode, is directed to keep the Execution Petition in R.E.P. 20 of 2014 pending, and the decree should not be executed.

6. With the above direction, the present Civil Revision Petition stands disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

06.12.2019

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

District Munsif Court,
Palacode.



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V.BHARATHIDASAN,J.

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