

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.3198 of 2014

Srinivasan

... Petitioner

versus

1. Gopal Moopar

2. Chinnathambi Moopar

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order and decretal order dated 13.04.2005 passed in E.P. No.50 of 2004 in O.S. No.693 of 1995, on the file of the Principal District Munsif Court, Kallakurichi, Villupuram District

For petitioner : Mr.R. Thanjan

For respondents : No appearance

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 13.04.2005 passed by the learned Principal District Munsif, Kallakurichi, Villupuram in E.P. No.50 of 2004 in O.S. No.693 of 1995.

Brief facts leading to the filing of the instant Civil Revision
Petition filed under Section 115 of the Civil Procedure Code.

2. The petitioner is the decree holder in E.P. No.50 of 2004. He obtained a decree against the respondents /judgment debtors for declaration and injunction in respect of the suit schedule property in O.S.No.693 of 1995, dated 17.01.1991 on the file of the Principal District Munsif Court, Kallakurichi. E.P. No.50 of 2004 was filed by the petitioner to execute the said decree by arrest of the respondents under the Civil Procedure Code. By order dated 13.04.2005, the executing Court dismissed E.P. No.50 of 2004 as the petitioner has not made out a case for arrest of the judgment debtors in civil prison. Aggrieved by the order, dated 13.04.2005, the instant Civil Revision Petition has been filed.

3. Heard Mr.R.Thanjan, learned counsel for the petitioner. Despite the names of the counsel being printed in the cause list, there is no representation on the side of the respondents.

4. While dismissing the Execution Petition filed by the petitioner, the Trial Court has observed that the respondents / judgment debtors

are aged 65 and 67 years respectively and further, the petitioner has not been able to establish by any documentary evidence as to how the respondents / judgment debtors have encroached upon the suit schedule property. Before the executing Court, the petitioner was examined as a witness and the judgment and decree passed in O.S.No.693 of 1995 was alone filed. No other documents were filed by the petitioners to establish that the respondents / judgment debtors have encroached upon the suit schedule property, subsequent to the passing of the decree in favour of the petitioner. The 1st respondent / judgment debtor was also examined as a witness in the execution proceedings.

5. Considering all these factors, the Trial Court has rightly dismissed the Execution Petition in E.P. No.50 of 2004 filed by the petitioner, on the ground that he has not been able to establish that the respondents / judgment debtors have encroached upon the suit schedule property. Hence, this Court is of the considered view that there is no merit in the Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. However, it is made clear that the petitioner is granted liberty to file a fresh Execution Petition, subject to the satisfaction of the Limitation to execute the judgment and decree,

ABDUL QUDDHOSE, J.

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dated 17.01.1999 passed in favour of the petitioner / decree holder, if the respondents / judgment debtors have encroached upon the suit schedule property. If and when, any such fresh Execution Petition is filed, the Executing Court shall dispose of the same in accordance with law. No costs.

05.07.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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To
The Principal District Munsif Court,
Kallakurichi,
Villupuram District.

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