

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CRP (NPD) NO.2675 OF 2019

AND

CMP NO.17628 OF 2019

1.Kousalya
2.Saravanan
3.Subramani @ Suri
4.Swaminathan

... Petitioners

Vs.

1.K.Mari
2.K.Mahavishnu
3.T.Dhanalakshmi
4.T.Senthilkumar
5.T.Rajasekar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the docket order in E.A.SR.2295 of 2019 in E.P.No.29 of 2018 in O.S.No.42 of 2008 dated 11.07.2019 on the file of the District Munsif cum Judicial Magistrate, Thiruvotriyur.

For Petitioners : Mr.N.Suresh

ORDER

The petitioners are aggrieved over the refusal by the Execution Court to entertain the execution application filed by them under Section 47 read Section 151 of Code of Civil Procedure.

2. According to the petitioners, the trial court passed a judgment and decree granting decree of partition alone and other prayers were not granted. However, without notice to the petitioners, the decree was amended by incorporating the relief of injunction also. Accordingly, the decree, which is inconsistent with the judgment, is not executable. Hence, they filed an execution application under Section 47 read with 151 of Code of Civil Procedure.

3. Learned counsel appearing for the petitioners would also submit that they have not alienated or encumbered the property as of today. Further, they have also filed an appeal against the judgment and decree before the Sub Court, Ponneri, which is yet to be numbered.

4. I have considered the submissions made by the learned

counsel appearing for the petitioners.

5. Curiously, the petitioners were set *exparte* in the execution petition. They filed an application to set aside that *exparte* order vide E.A.No.3 of 2019 in E.P.No.29 of 2018 in O.S.No.42 of 2008. The Execution Court refused to entertain the said application for the reason the petitioners remained *exparte* and they are not entitled to file any application without setting aside the *exparte* order.

6. Admittedly, the decree is only for partitioning the property and no action is taken by the respondents against the objectionable portion incorporated in the decree.

7. Learned counsel appearing for the petitioners himself on instructions would submit that the property has not been alienated or encumbered. The said statement has been recorded by this Court. If the appeal said to have been filed by the petitioners is numbered, final decree proceeding will be subject to its result. It is always open to the petitioners to get a stay of passing of final decree in the appeal

preferred by them. Till the *exparte* order is set aside, the petitioners are not entitled to file any fresh application. The Trial Court has rightly refused to entertain the execution application. Hence, I do not find any merits in this Civil Revision Petition and accordingly, stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

19.08.2019

Index : Yes/No
Internet : Yes/No
TK

To

The District Munsif cum Judicial Magistrate
Thiruvotriyur.



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M.GOVINDARAJ, J.

TK



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