

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3669 of 2019

and

C.M.P. No.24102 of 2019

Susai (Died)

1. Aruldoss

2. Selvarani

3. Francis

4. Arul Jayarani

... Petitioners

-Vs-

Savari Muthu

... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India to set aside the impugned order dated 29.03.2019 made in E.P. No. 40 of 2017 in O.S. No. 108 of 2010 passed by the learned Principal District Munsif, Tirukoilur.

For Petitioners : Mr. T.K. Saravanan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in E.P. No. 40 of 2017 in O.S. No. 108 of 2010 on the file of the the learned Principal District Munsif, Tirukoilur, by order dated 29.03.2019.

2. Before the Execution Court, the respondent / plaintiff filed E.P. No. 40 of 2017 to execute the decree made in O.S. No. 108 of 2010, by which, the trial Court decreed the suit filed by the respondent / plaintiff for declaration and for possession of the suit property.

3. The said EP was ordered through the impugned order. Challenging the same, the present revision petition has been filed by the revision petitioners who are the judgment debtors.

4. The learned counsel appearing for the revision petitioners would submit that, as against the decree passed by the trial Court in O.S. No. 108 of 2010, appeal was filed in A.S. No. 25 of 2014 before the First Appellate Court and the said appeal was filed by the Rev. Father,

one Susai, who was the original defendant in the suit and the said Susai died. Only thereafter, the present revision petitioners came to know that, he filed an appeal suit and was pending before the First Appellate Court and thereafter, when they try to pursue the said appeal suit, they came to know that, the appeal suit was dismissed for default long back. In order to restore the suit, an application was filed, wherein, since there is a delay of more than 700 days, necessary application to that effect to condone the delay was also filed, the said application is still pending before the First Appellate Court.

5. In the meanwhile, the Execution Petition has been ordered, therefore, the learned counsel would submit that, till the appeal suit is restored, where the revision petitioners / judgment debtors can seek some remedy for staying the operation of the Execution Petition, the present order which is impugned herein made in the Execution Petition can be stayed, that is the reason why the present revision petition has been filed.

6. I have considered the said submission made by the learned counsel appearing for the revision petitioners and perused the materials placed before this Court.

7. On the aforesaid reason, that the appeal suit filed by the revision petitioners though has been dismissed for default is yet to be restored, where petition to that effect was filed and pending before the First Appellate Court, till such time, those application is not decided, hence the Execution Petition can be deferred, the present revision petition has been filed. Apart from this reason, no other reason for assailing the order passed by the Execution Court, which is impugned herein, has been made. Therefore, this Court is not inclined to entertain this revision, as the Execution Court has not done anything against the law and no erroneous or perverse order has been passed in the impugned order.

8. In view of the above, the Civil Revision Petition fails and hence it is dismissed. However, in view of the aforesaid facts that, an application is filed to condone the delay in filing the restoration

application to restore the appeal suit filed by the revision petitioners against the decree made in O.S. No. 108 of 2010, thirty days time is given to the revision petitioners to pursue those applications, within which, it is open to the revision petitioners to pursue the application pending before the First Appellate Court and get an order to that effect on merits and it is also open to the revision petitioners to seek for stay of the Execution Proceedings, once the Appeal Suit is restored. For all these reasons, thirty days is given by this Court to the revision petitioners and till such time i.e., for a period of thirty days, the order impugned shall not be given effect. It is made clear that, beyond thirty days there is no impediment for the Execution Court to give effect to the impugned order.

9. With these directions and observations, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

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Index: Yes / No

Speaking order / Non speaking order

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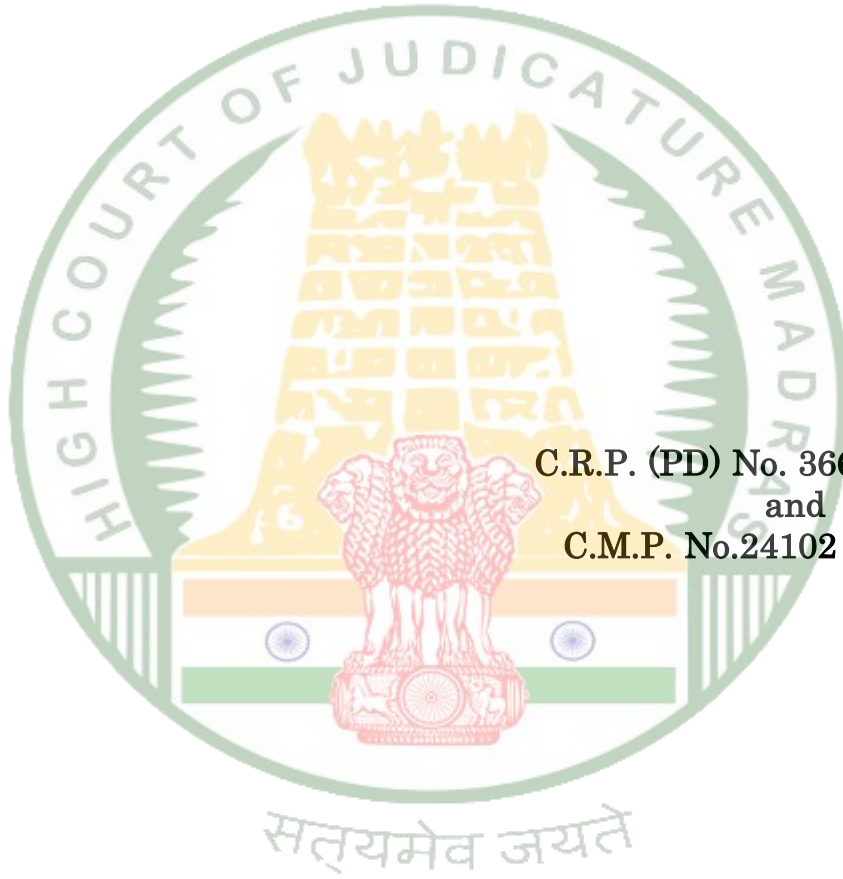
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R. SURESH KUMAR, J.

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To
The Principal District Munsif,
Tirukovilur.



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