

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.03.2019**

CORAM

THE HONOURABLE MS. JUSTICE **P.T.ASHA**

C.R.P.(NPD). No.3706 of 2018

and

C.M.P.No.20603 of 2018

Saraswathi

.. Petitioner

vs.

1. Radhakrishnan

2. Jayapal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05.09.2018 made in I.A.No. 78 of 2017 in A.S.No. 37 of 2017 on the file of the Learned I Additional District cum Sessions Judge, Vellore.

For Petitioner : Mr.K.Santhoshkumar

For Respondents : M/s.K.R.Samratt for R1

Mr.T.Sundar Rajan for R2

ORDER

The above Civil Revision Petition has been filed challenging the order of the dismissal passed in Interlocutory application filed by the revision petitioner / third party seeking permission to examine the

Village Administrative Officer, Kathathazhapattu, V.A.O., Office, Kattukannur Post Vellore Taluk and also to receive the documents annexed along with the application as an additional evidence.

2. The brief facts of the case are as follows:

The revision petitioner is a third party to the proceedings. A suit for specific performance was filed by the first respondent against the second respondent and the same was decreed. Consequent to the decree, possession was also taken by the first respondent as early as in the year 2004. Thereafter, the revision petitioner filed an application under Order 21 Rule 97 of the Civil Procedure Code claiming himself to be an obstructer. This petition came to be dismissed by the learned Additional District Munsif, Vellore, the learned Judge has held that the revision petitioner cannot be termed as obstructer because when delivery was taken, the obstruction was not recorded and the delivery of the possession had been given as early as in the year 2004. Therefore, the petition filed under Order 21 Rule 97 of the Civil Procedure Code was dismissed stating the remedy of the revision petitioner is to file a separate suit to declare the decree as null and void.

3. Challenging the said order, the revision petitioner had filed A.S.No.6 of 2015 on the file of the learned Subordinate Judge at Vellore. Pending the said proceedings the revision petitioner has filed the instant application, and the learned Judge has dismissed this application stating that the possession of the property had been taken in the year 2004 and the Executive Petition itself was terminated in the year 2006 and the present application relates to the documents which are of the year 2004, that is the date of the institution of the suit. The learned Judge has held that the petitioner has not made out any case for having the application allowed except the fact he wants the litigation to be prolonged. It is challenging the above said order, the revision petitioner is before this Court.

4. Heard the learned counsel appearing on both sides and perused the papers available on records.

5. On perusal of the papers, it is seen that the learned Additional District Munsif, Vellore has observed that the revision petitioner was not even in possession of the property when delivery was taken, since there is no record to show that delivery was obstructed and that apart, the revision petitioner has waited till the

P.T. ASHA, J.

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year 2014 to take steps when decree has been passed as early in the year 2004.

6. In view of the above, I do not find any infirmity in the order passed by the learned Judge. Hence the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.03.2019

Index: Yes/No
speaking/ Non speaking order
vji

To

The Learned I Additional District
cum Sessions Judge,
Vellore.

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