



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) (NPD) .Nos.588 of 2019
in

C.M.P (MD) .No.2907 of 2019

Ayyappan

:Petitioner/Respondent

Vs.

Pon Perumal

:Respondent/Petitioner

PRAYER: The Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure against the order dated 19.02.2019 passed by the Additional District Munsif Court, Thoothukudi made in E.P.No.69 of 2017 in O.S.No.29 of 2015.

For Petitioner

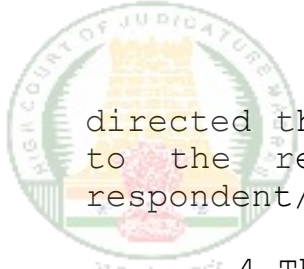
: Mr.Vellaichamy

ORDER

The Civil Revision Petition has been preferred against the order dated 19.02.2019 passed by the Additional District Munsif Court, Thoothukudi made in E.P.No.69 of 2017. in O.S.No.29 of 2015.

2.The petitioner herein is the respondent in the E.P. proceedings, contended that the order of the Executing Court is excessive exercise of jurisdiction. He further contended that the respondent/plaintiff has filed E.P.No.69 of 2017 suppressing the fact that A.S.No.42 of 2017 and corresponding I.A.No.2 of 2019 praying to grant of stay are pending adjudication and this fact was not considered by the Executing Court. The further contention of the petitioner is that if delivery is effected by the Executing Court, the very purpose of having filed the appeal suit will be defeated and the appeal will become infructuous and hence, the order of the Executing Court has to be set aside.

3.The petitioner further contended that originally the suit was filed by the respondent herein/plaintiff seeking for the relief of delivery of vacant possession and other reliefs regarding the arrear of rent amount. The petitioner herein as defendant had also filed the written statement. The trial Court after observing the documents and oral evidence, decreed the suit in favour of the respondent herein/plaintiff and directed the petitioner herein/defendant to hand over the vacant possession to the respondent herein/plaintiff within a period of three months and also



directed the petitioner herein/defendant to pay the arrears of rent to the respondent herein/plaintiff. Based on the decree, the respondent/plaintiff preferred the E.P., for delivery of possession.

4.The petitioner contended that against the said decree, he has filed A.S.No.42 of 2017 before the Sub Court, Thoothukudi and the same is known to the respondent/plaintiff, whereas, he has not stated the said fact in his execution petition.

5.On perusal of the Execution Petition filed by the respondent herein/plaintiff, the reference is made that there is no appeal pending. the petitioner herein as respondent filed a counter statement in the said Execution Petition by stating that the fact of pending of A.S.No.42 of 2017 was purposely suppressed by the respondent herein/plaintiff and further the said appeal is posted for argument. The said E.P., was filed on 24.04.2017. The counter statement was filed by the petitioner herein/respondent on 13.02.2018. The Executing Court on 19.02.2019 has passed an order by stating that though the appeal in A.S.No.42 of 2017 has been filed, there is no stay order passed by the said Court for staying the Execution proceedings. Hence, the Executing Court has observed the facts and circumstances of the case and passed an order for delivery of possession of vacant site and one month time was granted for the said process. On 19.03.2019, the delivery batta was ordered.

6.The petitioner herein/ defendant has filed I.A.No.2 of 2019 in A.S.No.42 of 2017 seeking for stay of the proceedings in O.S.No.29 of 2015. On perusal of records, it is observed that the petition was filed on 08.03.2019 and notice was also sent to the respondent/plaintiff on the same day and the said petition was posted for notice of hearing and counter on 24.04.2019. The learned counsel for the petitioner argued that when the appeal is preferred against the Decree of the lower Court and the lower Court ought not to have proceeded in the E.P proceedings, when the respondent as well as the Court knows the fact that the appeal is pending before the Court below.

7.On hearing the petitioner as well as on perusal of records, it is observed that the said E.P was filed on 24.04.2017. The petitioner herein has filed a counter statement in the said E.P., on 13.02.2018. After nearly one year, the Executing Court has passed an order on 19.02.2019 and the said case was passed on 19.03.2019 for delivery of batta and passed an order of delivery of possession within a month. The stay application in I.A.No.2 of 2019 was filed by the petitioner on 08.03.2019, after passing of the order by Executing Court on 19.02.2019. If really the petitioner herein is aggrieved against the decree of the trial Court, which was passed on 18.01.2017, he would have preferred the appeal immediately, whereas the said appeal was preferred by him only in the year 2017. When the petitioner is aggrieved by the said decree, the stay application would have been filed along with the appeal, whereas the petitioner has filed the counter statement for execution petition after a very



long time ie., on 13.02.2018. Further, it is also observed that on the date of passing of order in E.P., on 19.02.2019, there is no stay application pending before the Appellate Court. Since I.A.No.2 of 2019 was filed only on 08.03.2019, subsequent to the delivery order and hence there is no suppression of pendency of appeal or stay petition by the respondent/plaintiff. Further the Executing Court has also observed that there is no order or I.A is pending on the date of passing of order in the said E.P., Hence the order of the Executing Court is not an excessive exercise of jurisdiction as argued by the petitioner. The stay application was filed at the belated stage after passing order in the said E.P.,

8.In view of the above said observations regarding the date of filing of the appeal and on mere filing of I.A., after passing of delivery of possession, this Court does not interfere with the order passed by the trial Court.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Additional District Munsif, Thoothukudi

+1cc to Mr.Vellaichamy,Advocate, SR.No.59014

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SP/26.04.2019/3P/3C

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