

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.461 of 2020
and C.M.P.No.2475 of 2020

1.M.Mohan
2.V.S.Saranya
3.M.Vijayakumar

... Petitioners/Obstructors

-Versus-

1.K.Gandhi @ Karuppiah
2.Selvi @ Shanthi
3. M. Sivaraj

... Respondent/Plaintiff

... Respondents/Defendants

Petition filed under Article 227 of the Constitution of India, praying to set aside the docket order dated 03.02.2020 in E.A.SR No.413 of 2020 in E.P.No.116 of 2015 in O.S.No.25 of 2012 passed by the learned IV Additional District Judge, Ponneri and consequently, direct the learned Judge, to number the Execution Application and dispose of the same on merits.

For Petitioner : Mr.R.Bharanidharan

ORDER

This civil revision has been directed against the order returning the application filed by the petitioner in EA SR No.413 of 2020 under Order XXI, Rule 97, 98 and 99 r/w Sections 101 to 106 of CPC seeking to set aside the ex parte decree and other consequential order passed in E.P.NO.116 of 2015 as it was not maintainable.

2. According to the petitioners, the suit property absolutely belongs to them and without impleading them as party to the suit for specific performance of contract of an agreement, a collusive suit was filed and ex parte decree was also obtained. Based on such ex parte decree, the respondents had initiated execution proceedings to get the sale deed executed in their favour and to take possession of the property. Therefore, the petitioners have filed the application under revision. The executing court returned the application on the ground of maintainability of the application.

3. The learned counsel for the petitioner would submit that though the prayer in the application is to set aside the ex parte decree, the petitioner is only meant to obstruct the execution proceedings as the petitioners are the owners of the suit property and they are the title holder. This court is not persuaded by the above said argument. A bare reading of the prayer in the petition would go to show that the petitioner wanted only to set aside the ex parte decree which cannot be done under Order XXI, Rule 97 and 98 of CPC. However, if the petitioners have got any grievance over the execution of the decree, it is always open to them to make necessary application and if any such application is made, the Executing Court shall consider the same on merits and and pass orders in accordance with law.

In the result, this court does not find any merit in the revision and the executing court was right in returning the application filed by the petitioner on the ground of maintainability. The revision petition is dismissed accordingly, however, with the above observations. The Registry is directed to return the application in EA SR No.413 of 2020 filed by the petitioner along with this revision petition forthwith under due acknowledgment. No costs. Consequently, connected CMP is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1.The IV Additional District Judge, Ponneri

+1 CC to Mr.R.Bharanidharan, Advocate sr 8982.

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C.R.P.No.461 of 2020

RJI (CO)
SP(06/02/2020)