



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13..01..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.1958 of 2015
and
M.P.No.1 of 2015

Mr.Chinnasamy ... Petitioner/2nd Defendant/2nd Defendant

-Versus-

Aryamuthu Patiyach (Died)

1.Mrs.Mayajothi

2.Mrs.Suganthi

3.Mrs.Rani

4.Mr.Arulpandian ... Respondents 1 to 4/Petitioner/Plaintiffs

5.Ramalinga Padaiachi

6.Anjalai ... Respondents 5 to 6/Respondents/Defendants

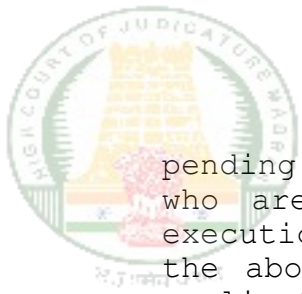
Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 19.12.2014 made in E.P.No.19 of 2009 in O.S.No.561 of 1997 on the file of the learned District Munsif, Thitakudi, Cuddalore District.

For Petitioner : Mr.M.Loganathan

ORDER

This civil revision petition is directed against the order dated 19.12.2014 dismissing the application of the petitioner and thereby refusing to stay the execution proceedings in E.P.No.19 of 2009 pending disposal of the suit in O.S.No.205 of 2010.

2. The petitioner was the 2nd defendant in O.S.No.561 of 1997 on the file of the learned District Munsif, Thitakudi. One Ariyamuthu Padaiachi, a predecessor of the respondents 1 to 4 filed the suit for a decree of declaration declaring his title in respect of an immovable property to an extent of 22 cents out of 37 cents in R.S.No.1/B5 at Murugankudi Village. The said suit was decreed ex parte. Subsequently, the petitioner herein filed a suit in O.S.No.205 of 2010 seeking cancellation of the decree made in O.S.NO.561 of 1997 and for other reliefs which has been



pending. Pending the above said suit, the respondents 1 to 4, who are legal heirs of the original plaintiff, initiated an execution proceedings in E.P.No.19 of 2009 for possession. In the above said execution petition, the petitioner has filed an application seeking to stay the execution proceedings on the ground that the decree in O.S.No.561 of 2017 is sought to be cancelled in O.S.No.205 of 2010 and the suit is pending and if the suit is decreed in his favour, the decree cannot be get executed, hence, sought for the stay of the execution proceedings. The executing court has dismissed the application under revision. Aggrieved by the same, the petitioner is before this court with this revision petition.

3. This revision petition is coming up today for admission. I have heard the learned counsel for the petitioner and perused the records carefully.

4. The learned counsel for the petitioner would submit that subsequent to the decree in O.S.No.561 of 1997, the petitioner has filed a suit seeking cancellation of the ex parte decree passed against him in O.S.No.561 of 1997 and the respondents 1 to 4 are contesting the same. According to the petitioner, pending disposal of the suit in O.S.No.205 of 2010, execution proceedings arising out of the decree in O.S.No.561 of 1997 should be kept pending and if delivery is ordered, the interest of the petitioner would get seriously affected and decree if any passed in his favour in the suit filed by him, the same can not be executed.

5. The learned counsel for the petitioner would further submit that even though the decree was only for 22 cents, the respondents are taking steps to take possession in respect of the entire 37 in which petitioner has also got right and interest to a portion of the property.

6. The contention of the petitioner cannot be countenanced for the simple reason that admittedly there is a decree against the petitioner and the decree is valid in the eye of law until it is cancelled by a competent court of law in the subsequent suit filed by the petitioner. The suit filed by the petitioner seeking cancellation of decree is pending and there is no order of stay granted by the court below in favour of the petitioner herein. In the above circumstances, the petitioner cannot seek for stay of the execution proceedings. However, it is needless to state that that the petitioner can very well contest the execution proceedings and convince the executing court by putting forth his contention in respect of the extent covered by decree and the total extent of the property. Admittedly, the



decree was only for 22 cents and therefore, the plaintiff can get the decree executed only to an extent of 22 cents and not more than that extent.

7. The executing court after having considered the entire material has rightly dismissed the application thereby refusing to stay the execution proceedings in which this court does not find any illegality or irregularity. Thus, the revision petition is devoid of merit and the same is liable only to be dismissed.

In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The District Munsif,
Thitakudi, Cuddalore District.

Civil Revision Petition
No.1958 of 2015

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srg 15/07/2020