

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P. (NPD) 2895 of 2015

and

M.P. 1 of 2015

1. R.Sreenivasan

2. R.Prabu

... Petitioners

Versus

1. S.Vijaya Ammal

2. R.Ramalingam Naidu

3. K.Elango

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to set aside the order dated 25.02.2015 passed in E.A. 282 of 2014 in E.P. 2 of 2005 in O.S. 166 of 2002 on the file of Principal Subordinate Judge, Cuddalore.

For Petitioners : Ms.Grahalakshmi

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioners application filed under Sec. 47 of

C.P.C.

2. The 1st respondent, who is THE plaintiff, filed a suit for specific performance against the respondents 2 and 3 herein in O.S. 166 of 2002. The above suit came to be decreed by a judgment and decree dated 29.06.2004. Thereafter, the 1st respondent has filed an execution petition in E.P. 2 of 2005, in which the petitioners, who are sons of 2nd respondent filed an application under Sec.47 of C.P.C. stating that, the suit property is a joint family property, which has been purchased from and out of the income derived from the joint family business. Hence, they are having title over the property, and the decree is not binding on them, and it cannot be executed. The Trial Court has dismissed the application on the ground that, the petitioners are claiming independent right over the suit property. Hence, they cannot maintain the application. Challenging the same, the present Civil Revision Petition has been filed.

3. I have considered the submissions made by learned counsel appearing for petitioners as well as learned counsel appearing for respondents and perused the records carefully.

4. As rightly stated by the court below, the petitioners are

claiming independent title over the suit property. It is a settled law, the application filed under Sec.47 of C.P.C. can be filed between the parties to the suit or their representatives. In the instant case, the petitioners have filed an application claiming independent title over the property. Hence, they cannot maintain the application under Sec.47 of C.P.C. The Trial Court has rightly dismissed the application. Therefore, I find no illegality or irregularity in the order passed by the Court below, and I find no merit in this Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. It is needless to say, if at all, the petitioners are having title over the suit property, it is always open to them to work out their remedy in the manner known to law. No costs. Consequently, the connected Miscellaneous Petition in M.P. 1 of 2015 is closed.

सत्यमेव जयते

06.01.2020

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

Principal Subordinate Judge,
Cuddalore.

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V.BHARATHIDASAN,J.

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