

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2434 of 2018
in
C.M.P.No. 14955 of 2018

1.V.Rajabathar
2.Pitchai Ammal
3.Chamundeeswari

..Petitioners

Vs.

1.M.Gowri
2.G.S.Poonguzhali

..Respondents

Prayer: Petition filed under Section 115 of C.P.C, against the fair and decreetal order dated 11.04.2018 passed by the X-Assistant Judge, City Civil Court, Chennai in E.A.No. 2708 of 2016 in E.P.No. 1168 of 2010.

For Petitioners :Mr.B.Balanchandar for Ashok Menon

For Respondents :No Appearance

O R D E R

This Civil Revision Petition is at the instance of the judgment debtor, who had suffered by a decree for removal of encroachment. The first respondent / decree holder laid a suit in O.S.No. 4198 of 1997 seeking ejection of the defendant namely, the petitioner herein and his father Venugopal Mudaliar from the suit property, which is a passage and for delivery of possession of the same. सत्यमेव जयते

2. The suit was decreed on 22.08.2008. The decree was sought to be put in execution in E.P.No. 1168 of 2010. On 28.03.2016, the executing Court allowed the execution petition and directed removal of encroachment. In the meantime, the first defendant in the suit namely, father of the first petitioner herein, Venugopal died and his legal representatives were impleaded as respondents 2 and 3 in the Execution Petition. The petitioners herein, filed E.A.No. 2708 of 2016 purportedly under Order 1 Rule 10 (2) of the Code of Civil Procedure to implead the second respondent, Poonguzhali. According to them, she had encroached the Northern side. This application was resisted by the decree holder contending that this application

is an abuse of process of Court and there was no pleading in the suit that the said Poonguzhali had encroached upon the property. The Trial Court accepted the defence and dismissed the application. Aggrieved, the petitioners, who are judgment debtors have come up with this Civil Revision Petition.

3. I am convinced that the E.A.No. 2708 of 2016 itself is not maintainable. What is pending before the Court below is an Execution Petition seeking execution of the decree that has been passed against the petitioners. The decree has become final. It is a settled law that the Execution Court cannot go beyond the decree. Addition of parties, who are not bound by the decree being made parties in an execution petition is unknown to law. This application is nothing but attempt to drag on the execution petition, which has been pending for 10 years now. The suit is of the year 1997 and the same was decreed as early as on 22.08.2008. It is 17 years now, the decree holder has been successfully kept at bay by the petitioners. I do not see any merit in the Civil Revision Petition and the Civil Revision Petition is therefore, dismissed. Consequently, connected miscellaneous petition is closed. No costs.

4. The executing Court is directed to proceed with the execution petition and dispose of the same within two months from the date of commencement of normal functioning in the Courts in Chennai.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The X-Assistant Judge, City Civil Court,
Chennai.

2. The Section Officer,
V.R. Section,
Madras High Court, Chennai.

+1cc to Mr.Ashok Menon, Advocate in Sr no.25967

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MG (CO)

RV (02/09/2020)