

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2020

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

**C.R.P(NPD)No.3271 of 2018
and C.M.P.No.18565 of 2018**

1.Amudha
2.Venkatesh

...Petitioners

Versus

1.Dharmalingam
2.Chinnaponnu

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the docket order dated 10.10.2018 passed in R.E.A.No.218 of 2013 in R.E.P.No.60 of 2012 on the file of the I Additional Subordinate Judge, Salem.

For Petitioners

Mr.R.Nalliappan

For Respondents

Mr.P.Anandakumar

ORDER

The relief sought for in the present Civil Revision Petition is to set aside the docket order dated 10.10.2018 passed by the learned Additional Subordinate Judge No.I, Salem in R.E.A.No.218 of 2013 in R.E.P.No.60 of 2012.

2. The brief facts of the case are as follows:

The respondents/plaintiffs filed a suit O.S.No.712 of 1982 against the petitioners and 6 others for the following reliefs:

- (a) declaring that the plaintiffs are the absolute owners of the suit property;
- (b) directing the defendants to deliver the suit property to the plaintiffs;
- (c) directing the defendants to pay future *mesne* profits at the rate of Rs.200/- per month or at a rate to be declared by the Court under Order 20 Rule 12 C.P.C. and
- (d) directing the defendants to pay the costs of the suit.

2.1 The aforesaid suit was dismissed on 24.07.1985, against which, the respondents preferred a First Appeal in A.S.No.37 of 1986 before the II Additional District Judge, Salem and the same was allowed on 26.10.1987.

2.2 Thereafter, the petitioners preferred an Execution Petition in R.E.P.No.60 of 2012 praying to send notice to the petitioners under Order 21 Rule 22 of C.P.C and in the event of the petitioners failure to deliver possession of the suit property order the Court Amin by issuing the warrant to deliver possession of the petition mentioned property to the respondents/decreed holders under Order 21 Rule 35 of C.P.C.

2.3 While the said R.E.P is pending, the petitioners had filed R.E.A.No.218 of 2013 against the respondents and the same was dismissed for non-prosecution on 10.10.2018, by the learned Additional Subordinate Judge No.I, Salem. Aggrieved by the said docket order, the petitioners have filed the present Civil Revision Petition before this Court.

3. The learned counsel for the petitioners would contend that though the petitioners are always ready and willing to proceed with R.E.A.No.218 of 2013, the learned Additional Subordinate Judge No.I, Salem has dismissed the said R.E.A. by holding that the petitioners are not ready to get along with the enquiry. He would further contend that the Court below ought not to have dismissed the above Application by way of a non-speaking order. He therefore prayed that the impugned order may be set aside.

4. The learned counsel appearing for the respondents would submit that the petitioners are very well aware of the fact that there is no decree or share in the petition mentioned properties in R.E.P.No.60 of 2012, however, they filed R.E.A.No.218 of 2013 only with an intention to drag on the delivery of possession of the properties. He therefore prayed that the present Civil Revision Petition may be dismissed.

5. Heard the learned counsel on both sides and perused the materials available on record.

6. Considering the submissions made by the petitioners' counsel, this Court is inclined to allow the present Civil Revision Petition and set aside the impugned order.

7. Accordingly, this Civil Revision Petition is allowed and the docket order dated 10.10.2018 passed by the learned Additional Subordinate Judge No.I, Salem in R.E.A.No.218 of 2013 in R.E.P.No.60 of 2012 is set aside. The learned Additional Subordinate Judge No.I, Salem is directed to afford an opportunity of hearing to the petitioners and after affording such opportunity to the petitioners, dispose of R.E.A.No.218 of 2013, as expeditiously as possible, on or before 30.08.2020. No costs. Consequently, connected Miscellaneous Petition is closed.

mrr

Index : Yes/No

D.KRISHNAKUMAR, J.,

mrr

To

The Additional Subordinate Judge No.I,
Salem.



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