



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (NPD) (MD)No.897 of 2012

WEB COPY

Thangapandi : Revision Petitioner/Respondent/
Petitioner/Plaintiff
.. Vs ..

Arumugasamy (Died)

1.Padmavathi

2.Vimaladevi

3.Periaveldurai

: Respondents 1 to 3/Petitioners/Legal
Heirs of deceased Arumugasamy

4.Kaliappa Pillai

5.Deivendran

6.Vetrivel @ Raveendran

7.Jamiladevi Rajendran

8.Pulavendran

: Respondents 4 to 8/Respondents 2 to 6/
Respondents 2 to 6/Defendants 2 to 6

(Respondents 4 to 8 are given up as not necessary parties)

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and final order dated 17.11.2011 made in E.A.No.764 of 2010 in E.P.No.227 of 2004 in O.S.No.336 of 1996 on the file of Principal District Munsif Court, Thoothukudi.

For Petitioner : Mr.S.Kadarkarai

For Respondents 1 to 3 : Mr.PT.S.Narendravasan

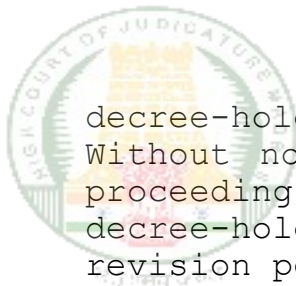
Respondents 4 to 8 given up

- - - - -

ORDER

This Civil Revision Petition is directed against the order in E.A.No.764 of 2010 in E.P.No.227 of 2004 in O.S.No.336 of 1996. The revision petitioner is the plaintiff in the suit in O.S.No.336 of 1996 on the file of the District Munsif Court, Thoothukudi.

2.The suit is for declaration of his title in respect of the superstructure in the suit property and for recovery of possession and for ejectment of respondents 1 and 2 from the suit properties. There were other consequential reliefs in the suit. It is admitted that the said suit was decreed. Though the first appeal preferred by the defendants in the suit in A.S.No.41 of 1997 was dismissed, it is admitted that the second appeal preferred by the contesting defendants is pending before this Court. It is also admitted that in the second appeal that is filed by the contesting defendants, this Court granted stay of all further proceedings. However, the



decree-holder has filed an execution petition in E.P.No.227 of 2004. Without noticing that this Court has granted stay of all further proceedings, it appears that the execution petition filed by the decree-holder was allowed and possession was delivered to the revision petitioner.

WEB COPY

3.Later, the tenant has filed an application for restitution saying that the order of delivery was executed when the stay granted by this Court was in operation and that therefore, the judgment-debtors are entitled to restoration of possession. This petition was ordered by lower Court. Aggrieved by the same, the above Civil Revision Petition is preferred by the landlord.

4.The short issue that arise for consideration is that whether the restitution ordered by the lower Court is valid and lawful. It appears that the stay order granted by this Court was not brought to the notice of the lower Court when the lower Court ordered delivery of possession. It is also to be seen that one of the judgment-debtors by name Arumugasamy was no more when the delivery was ordered in the execution petition. Therefore, the decree was executed against the dead person. When it is brought to the notice of this Court that this Court in the second appeal has granted interim stay, the lower Court noticed that the delivery was effected when the stay was in force and that the whole thing was by mistake. It is to be seen that the inherent power under Section 151 C.P.C. is relevant and in a case of this nature when something is done in violation of the interim order of this Court, the lower Court has got power to restore *status quo ante* in exercise of its inherent power. A Full Bench of this Court in the case of ***Century Flour Mills Ltd. vs S. Suppiah And Ors.*** reported in AIR 1975 Madras 270 has held as follows:

"9. In our opinion, the inherent powers of this court under Section 151 C.P.C. are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to go to that extent as we hold that the power is available under Section 151. C.P.C.

5.Having regard to the admitted facts, this Court find no merit in the Civil Revision Petition. The order passed by the lower Court



restoring possession is perfectly valid and this Court find no error or irregularity in the judgment of the lower Court. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

1. The Principal District Munsif Court,
Thoothukudi.
2. +1 CC to Mr.S.KADARKARAI, Advocate
(SR-10144[F] dated 05/03/2020)

C.R.P (NPD) (MD)No.897 of 2012
04.03.2020

TP (08.05.2020) 3P 3C