



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

CORAM

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

C.R.P (NPD) (MD)No.913 of 2012

and

M.P. (MD)No.1 of 2012

Kuppusamy : Plaintiff/Petitioner/Respondent/Petitioner
.. Vs ..

1.Nalliyanan

2.Neelavathi

3.Saranya

4.Abinaya (Minor)

represented by Mother 2nd respondent

: Defendants/Respondents/Petitioners/

Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, praying to allow the above Civil Revision Petition with cost by setting aside the fair and final orders passed in E.A.No.85 of 2011 in E.P.No.10 of 2008 in O.S.No.219 of 2003 on the file of the District Munsif Court, Musiri.

For Petitioner : Mr.S.Kanniah

For Respondents 1, 2 & 4 : No appearance

Respondent 3 - Dismissed vide order dated 14.06.2016.

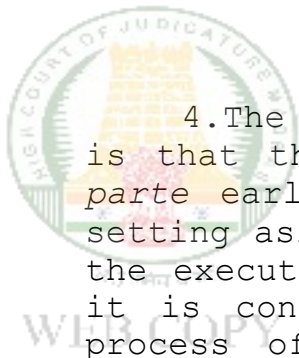
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ORDER

The plaintiff in the suit in O.S.No.219 of 2003 is the revision petitioner. The revision petitioner filed a suit in O.S.No.219 of 2003 on the file of the District Munsif Court, Musiri, for declaration and for consequential relief of possession after removing the superstructures put up by the defendants in the suit.

2.It is admitted that the decree was passed by the trial Court on 12.06.2007. It is also admitted that a regular appeal has been filed by the defendants as against the judgment and decree in O.S.No.219 of 2003.

3.The petitioner filed an execution petition in E.P.No.10 of 2008 before the trial Court and the execution petition was allowed *ex parte*. Thereafter, on the application filed by the defendants to set aside the *ex parte* order, the trial Court allowed the petition on payment of cost of a sum of Rs.600/- to be paid by the respondents. Challenging the said order, the above Civil Revision Petition is filed.



4.The only objection that is raised by the revision petitioner is that the petition was ordered after setting the respondent *ex parte* earlier and that the execution petition was restored after setting aside the *ex parte* order. Since the respondent has allowed the execution petition to be ordered *ex parte* on earlier occasion, it is contended by the petitioner that it will be an abuse of process of law if the Court permits the defendants to file a petition one after another and not to appear and contest the matter on merits when the execution petition was heard on merits.

5.The lower Court has considered the fact that the application was filed for the second time and that earlier, the said application is restored on different grounds. Considering the position that the lower Court has exercised its discretion, this Court is not inclined to entertain this Civil Revision Petition as no prejudice is likely to be caused to the petitioner/decreed-holder. Accordingly, this Civil Revision Petition is dismissed with a direction to the lower Court to dispose of the execution petition within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

1. The District Munsif Court,
Musiri.

2. +1 CC to Mr.R.GOVINDARAJ, Advocate
(SR-11013[F] dated 11/03/2020)

C.R.P (NPD) (MD) No.913 of 2012
10.03.2020

TP (08.05.2020) 2P 3C