



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2020

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.R.P (MD) No.340 of 2020

and

C.M.P. (MD) No.1948 of 2020

P.Thavasi

... Revision Petitioner/2nd Respondent/
2nd Defendant

Vs.

1.R.Rajasekaran ... 1st Respondent/Petitioner/Plaintiff
2.Bommuraj ... 2nd Respondent/1st Respondent/1st Defendant
3.Suganya ... 3rd Respondent/2nd Respondent/3rd Defendant

Prayer: Civil Revision Petitions filed under Section 115 of Civil Procedure Code, to set aside the fair and executable order, dated 19.12.2019 passed in E.P.No.134 of 2015 in O.S.No.6 of 2015 by the Sub-Judge, Uthamapalayam.

For Petitioner : Mr.S.Palpandi
For R1 : Mr.A.Arumugan
for Mr.M.Natarajan

ORDER

This Civil Revision Petition is filed against the order, dated 19.12.2019 passed in E.P.No.134 of 2015 in O.S.No.6 of 2015 on the file of the Subordinate Judge, Uthamapalayam.

2. The revision petitioner is the second defendant, first respondent herein is the plaintiff and the respondents 2 and 3 herein are the first and third defendants in the suit.

3. The first respondent herein / plaintiff filed a suit in O.S.No.6 of 2015 for a prayer of recovery of possession and for mandatory injunction. The first respondent / plaintiff obtained a decree on 11.08.2015. Thereafter, the first respondent herein / plaintiff filed an Execution Petition in E.P.No.134 of 2015 for recovery of possession. After considering both sides, the Execution Court passed an order for delivery of possession. Against which, the revision petitioner /second defendant preferred this Civil Revision Petition.



4. On the side of the revision petitioner, it is stated that the revision petitioner filed a Second Appeal before this Court in S.A.(MD)No.499 of 2019 and the same was dismissed for default on 19.11.2019 and thereafter, the revision petitioner preferred a restoration petition, within 15 days from the date of dismissal of that Second Appeal and presented it on 03.12.2019 in C.M.P.No.11914 of 2019. Without giving an opportunity to the petitioner, to disclose the factual situation and without considering the pendency of C.M.P.No.11914 of 2019 in S.A.No.419 of 2019, the trial Court passed an order in a hastily manner. The description of the property was wrongly mentioned in the Execution Petition and an opportunity, to produce evidence, was not given to the petitioner, which is a violation of the principles of natural justice and prayed the impugned order to be set aside.

5. On the side of the first respondent, it is stated that the revision petitioner filed an appeal in A.S.No.25 of 2016 against the suit in O.S.No.6 of 2015 and the Appeal was dismissed on 07.06.2009, after the disposal of that appeal, the revision petitioner preferred the second appeal in S.A.No.499 of 2019 and the same was dismissed for default on 19.11.2019. When there is no stay, the first respondent herein / plaintiff is entitled to proceed with the Execution Petition. It is further stated that the claim of the revision petitioner is based on a sale agreement, the petitioner filed a suit in O.S.No.1 of 2011 and that the said suit was rejected and the petitioner has not taken any steps to file an appeal. There is no such sale agreement, the petitioner was in possession only on the basis of an oral othi deed and the petitioner is having no right to squat upon the property.

6. On the side of the first respondent, it is further stated that even in the affidavit filed in S.A.No.499 of 2019 in paragraph - D, the revision petitioner has admitted the rejection of the suit in O.S.No.1 of 2011, but, till now, the revision petitioner has not taken any steps against the judgment of the suit in O.S.No.1 of 2011.

7. On the side of the first respondent, it is further stated that when restoration petition is pending before this Court, the trial Court has no right to pass an order in the Execution Proceeding. It is well settled that unless there is a stay order, the trial Court can proceed with the cases and the contention of the revision petitioner is wrong.

8. It is seen that after the decree passed in the suit in O.S.No.6 of 2015, the revision petitioner filed a first appeal in A.S.No.25 of 2016 and the same was dismissed, he filed a Second Appeal in S.A. (MD)No.499 of 2019 and the Second Appeal was



dismissed for default and only a restoration petition in C.M.P. (MD)No. 11914 of 2019, is pending before this Court.

9. When there is no stay order, the Execution Court is at liberty to proceed with the case. In the above circumstances, there is nothing wrong in the order of the Execution Court. There is no merit in this revision petition.

10. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls

To

1.The Sub Court, Uthamapalayam.

copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M.NATARAJAN, Advocate (SR-8155[F] dated 25/02/2020)

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srk(CO)

TR(26.02.2020)3P 5C