



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2020

Delivered on : 22.05.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.2275 of 2019

and

CMP (MD) No.11772 of 2019

WEB COPY

1.Jesuraj
2.Sahayaraj
3.Divyanathan

... Petitioners/Petitioners/3rd parties
Vs.

Maadhusri Akkabai Ammani Chathiram
Rep by its Hereditary Trustee,
Ananthakumar,
No.73, Big Street,
Pattukkottai Taluk and Munsif

... Respondent/Respondent/
Petitioner/Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decretal order dated 31.10.2019 passed by District Munsif Court, Pattukkottai in E.A.No.57 of 2019 in E.P.No.51 of 2000 in O.S.No.233 of 1977 and to set aside the same.

For Petitioner : M/s.D.Farjana Ghouusha
For Respondent : Mr.K.Navaneetha Raja

ORDER

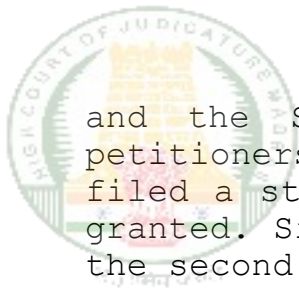
This petition has been filed against the order dated 31.10.2019 passed in E.A.No.57 of 2019 in E.P.No.51 of 2000 in O.S.No.233 of 1977 on the file of the District Munsif Court, Pattukkottai.

2.The petitioners herein are the 3rd parties and the first respondent herein is the plaintiff in the suit.

3.The respondent has filed a suit in O.S.No.233 of 1977 for recovery of possession against one Nadimuthu and Angammal. That suit was decreed in favour of the plaintiff. The plaintiff filed a petition in E.P.No.51 of 2000 for execution of the decree. During the pendency of the suit, the defendant sold the property to the petitioners herein. The petitioners filed a suit in O.S.No.193 of 2000 for declaring the decree in O.S.No.233 of 1977 as not binding upon them and for declaration of title. After full trial that suit was dismissed. The petitioner filed an appeal in A.S.No.35 of 2003. That first appeal was also dismissed. Again the petitioners preferred a Second Appeal before this Court in S.A.No.493 of 2004. In E.P.No.51 of 2000 delivery was ordered on 16.09.2019. In

2019 before

<https://hcservicecourts.gov/it/hcservices/>



and the Second Appeal in S.A.No.493 of 2004 is pending. The petitioners were not parties in O.S.No.233 of 1977. The petitioners filed a stay petition in the Second Appeal and an interim stay was granted. Since, the counsel reported 'no instruction' on 28.11.2016, the second appeal was dismissed for default.

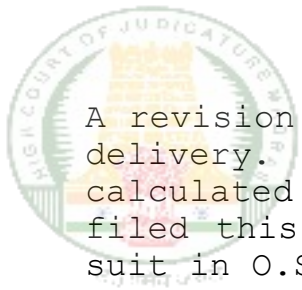
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8.On the side of the petitioner, it is stated that in C.M.P. (MD)No.150 of 2017 in S.A.No.493 of 2004, on 23.06.2017 the counsel for the respondent gave an undertaking that he would not proceed with the E.P and the same was recorded by this Court. But the learned District Munsif Court, Pattukottai, passed an order of delivery on 22.08.2019. Hence, the petitioner filed a petition to re-call the delivery warrant in E.A.No.57 of 2019. The learned District Munsif Court, Pattukottai, dismissed that petition and that order is perverse in nature. It is wrong to state that the undertaking was given only for a period of two weeks and the Trial Court is wrong in deciding that the Second Appeal is not pending and the stay order was not extended. Since, the petitioner are not respondent in the E.P, they cannot file any appeal or revision against the delivery order and hence, the order in E.A.No.57 of 2000 has to be set aside.

9.On the side of the petitioner, it is stated that against the undertaking given by the respondent counsel, not to proceed with the E.P, the order of delivery was passed. The Trial Court has wrongly mentioned that Second Appeal is not pending. The Trial Court failed to consider that since the petitioners are 3rd parties to the suit, the petitioners cannot file any suit or appeal against the delivery order.

10.On the side of the respondent, it is stated that the respondent is fighting for his right for more than 40 years. The original suit was filed against the vendor of the petitioners. The petitioners purchased the property during the pendency of the suit. The petitioner filed a suit to declare the decree in O.S.No.233 of 277 as null and void. That suit was dismissed. The First Appeal was also dismissed. Though, a stay order was granted in the Second Appeal, subsequently, the stay petition was dismissed by the Court on 02.11.2016. No appeal or revision was filed against that order.

11.Subsequently, the Second Appeal was dismissed for default on 23.06.2017. The restoration petition along with another stay petition were filed. When this Court was ready to dispose of the Second Appeal itself and has called for the records from the Lower Court and posted the matter on 10.07.2017, the respondent counsel has given an undertaking not to proceed with the E.P till 10.07.2017 i.e., from 23.06.2017 till 10.07.2017. That undertaking was not an eternal undertaking. It is wrong to state that delivery was ordered on 22.08.2019. Actually delivery was ordered on 16.06.2000 itself. There was no stay and there was no injunction order against the E.P



A revision should be filed within 60 days from the date of order of delivery. That is on 16.08.2000. Even if the limitation is to be calculated from the date of knowledge, the petitioner should have filed this petition within 60 days from the date of filing of the suit in O.S.No.193 of 2000.

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12.It is seen that the respondent filed a suit against the vendor of the petitioners in the year 1977 and obtained a decree and filed E.P petition in E.P.No.5 of 2000 for recovery of possession. It is seen that the petitioners are subsequent purchasers during the pendency of the suit. It is seen that the petitioner filed a suit in O.S.No.193 of 2000 to declare the decree in O.S.No.233 of 1977 as nullity and not binding upon the petitioners. That suit was dismissed. First Appeal filed against the dismissal of the suit was also dismissed. A stay petition was filed and the interim stay was granted in the second appeal. Subsequently, on 02.11.2016, that stay order was vacated by this Court. The petitioners did not prefer any revision against the dismissal of the stay petition.

13.The petitioner preferred a petition to restore the Second Appeal along with another stay petition. In the second stay petition, the counsel for the respondent gave an undertaking not to proceed with the E.P. The contention of the respondent counsel is that the undertaking was given from 23.06.2017 till 10.07.2017. The contention of the petitioner is that the undertaking is for a period till the disposal of the second appeal and that against the undertaking given by the respondent counsel, the respondent proceed with the E.P and that the delivery order was passed on 22.08.2019 and that delivery warrant has to be set aside.

14.The records of this Court reveals that an undertaking was given for a period that ends on 10.07.2017. A perusal of the records, reveals that the delivery was ordered on 16.06.2000 itself and not on 22.08.2019. It is seen that there was no stay order against the E.P proceedings. More over only a restoration petition is pending and the Second Appeal was not pending on the date of delivery. Since, delivery was ordered on 16.06.2000 itself, the remedy available to the petitioner is to file a revision within 60 days from the date of that order. No such revision was filed against the delivery order. Even if the petitioner had no knowledge of that order, this petition should have been filed within 60 days from the date of filing of O.S.No.193 of 2000. Hence, the prayer sought for by the petitioner is barred by limitation. Even in the revision petition, no reason is stated by the petitioner regarding the point of limitation.

15.In the above circumstances, there is no reasons sufficient enough to interfere in the orders of the Trial Court. Hence, the order passed in E.A.No.57 of 2019 in E.P.No.51 of 2000 in O.S.No.233 of 1977 on the file of the learned District Munsif Court, <https://hccservices.hccs.gov.in/hccservices/> hereby confirmed and the Civil revision petition is



dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

Dss

Note: With the consent of both side counsels the order is pronounced in the Open Court through Video conference on this 22nd day of May 2020.

To

1.The District Munsif Court,
Pattukottai.

2.The Record Keeper, (2 COPIES)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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order made in

C.R.P. (PD) (MD)No.2275 of 2019

and

CMP (MD)No.11772 of 2019

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SMA/16/07/2020/5P/4C