



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.08.2021

Pronounced on : 03.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.No.1019 of 2018

and

C.M.P.No.5410 of 2018

Saratha .. Petitioner / 1st Respondent
Vs.
1.Kalavathi .. 1st Respondent / Petitioner
2.Munusamy
3.Gopalsamy .. 2 & 3 Respondents / 2 & 3 Respondents

PRAYER: Civil Revision Petition under Section 115 of the Code of Civil Procedure against the fair and decreetal order of the learned Principal District Munsif, Karaikal dated 11.02.2016 made in E.A.No.18/2012 in E.P.No.20/1997 in O.S.No.215/1995.

For Petitioner : Mr.S.Saravanakumar for
Mr.I.Abrar Mohamed Abdullah

For Respondents : Mr.Soundararajan for
Mr.B.Gowthamarajan (for R1)
No appearance for R3
R2-Not ready in notice.

ORDER

This Civil Revision Petition arises out of the order passed in E.A.No.18/2012 in E.P.No.20/1997 in O.S.No.215/1995 by the Principal District Munsif, Karaikal, dated 11.02.2016.

2.The brief facts of the case are that the first respondent Kalavathi filed the suit O.S.No.215 of 1995 against the respondents 2 and 3, namely, Munusamy and Gopalsamy for recovery of possession of the suit property. The said suit was decreed on 26.09.1996. The first respondent/decreed-holder filed the execution petition in E.P.No.20 of 1997 for delivery of the suit property. The Executing Court issued warrant. The petitioner obstructed the execution of the decree. Therefore, the decree-holder was constrained to file E.A.No.427 of 1998



under Order 21 Rule 97 r/w 151 C.P.C for removal of obstruction caused by the petitioner herein. The Executing Court allowed the application. However, the order of the Executing Court was reversed by the appellate Court. On further appeal to this Court in S.A.No.1570 of 2000, the order of the Executing Court was restored vide Judgment and Decree dated 04.03.2011.

3.In the meantime, the Executing Court vide order dated 05.06.2000 dismissed the execution petition on the basis of the representation made by the Judgment Debtor. Admittedly, the counsel for the plaintiff/decreed-holder was absent, on which date, the execution petition was dismissed. Thereafter, the present application was filed to condone the delay 11 years, 1 one month and 3 days in filing the application to restore the execution petition, which was dismissed for non-appearance on 05.06.2000. The delay was condoned by an order dated 11.02.2016. Questioning the same, the present revision has been filed.

4.It is the contention of the learned counsel appearing for the petitioner that Section 5 of the Limitation Act would not apply to the proceedings in execution petition. Further, the inordinate delay of more than 11 years to restore the execution petition was not explained and hence, the order is liable to be set aside.

5.Per contra, the learned counsel appearing for the first respondent submitted that the petitioner was not a party to the suit and her claim over the property was rejected in the second appeal in S.A.No.1570 of 2000 and when the petitioner has no right over the property, consequently, she has no locus standi to file this revision.

6.I find force in the contention of the learned counsel for the first respondent for the reason that the petitioner herein resisted the execution of the decree passed in O.S.No.215 of 1995 on the basis that she was the owner of the superstructure. Though her claim was accepted by the appellate Court in A.S.No.19 of 1999, however, in S.A.No.1570 of 2000, it has been held that unregistered document (Ex.P.1) on the basis of which, the petitioner claims, is factually unsustainable and the finding in the Appeal Suit is illegal. It is further held that the plaintiff/decreed holder is entitled to get the relief as sought for in her petition for removal of obstruction. It is relevant to point out that the petitioner is none other than the mother of the judgment debtor No.1 and she has no independent



right over the suit property.

7.From the perusal of the records, it is seen that the Executing Court has gone in detail, before condoning the delay. In my considered view, the reason assigned by the Executing Court for condoning the delay need not be gone into as it has been already held that the petitioner has no locus standi to assail the order passed by the Executing Court. It is an admitted fact that the Judgment Debtors have not challenged the order impugned in this revision. It is appropriate to note that the petitioner was added as respondent in the present application, even though she was not a necessary party, which enabled her to file this case.

8.In the light of the above findings, I find no reason to interfere with the order of the Executing Court. In that view, this revision fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

9.Taking note of the fact that the Decree passed by the competent civil Court dated 26.09.1996, could not be executed for about two and half decades, the Executing Court shall pass appropriate orders for delivery of possession of the suit property within four weeks and shall not entertain any interim application from either Judgment Debtor or from the third parties.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

skn

To

The Principal District Munsif, Karaikal.

+1cc to M/s.B.Gowthamarajan, Advocate, S.R.No.44538

+1cc to Mr.I.Abrar Md. Abdullah, Advocate, S.R.No.45103

C.R.P.No.1019 of 2018
and

C.M.P.No.5410 of 2018

SSV(CO)
SB(24/09/2021)