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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.2313 of 2021
and C.M.P. No.17528 of 2021

Kondan (died)

- 1.Kandammal
- 2.Selvam
- 3.Kaliappan
- 4.Sumathi
- 5.Ramayee

...

Petitioners

versus

Komarasamy (died)

- 1.Chinnathayammal
- 2.Athiyappan
- 3.Thangaraj
- 4.Ponnusamy
- 5.Vijayalakshmi

Chinnan (died)

- 6.Gunasekaran
- 7.Kandan
- 8.Murugesan
- 9.Sellappan



Ponnammal (died)
10.Kuppan
11.Rajendran
12.Killan
13.Sellappan
14.Sellammal
15.Mariammal
16.Lakshmi

...

Respondents

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 23.08.2021 made in R.E.P.No.39 of 2012 in O.S.No.645 of 1997 on the file of the learned Principal District Munsif, Namakkal.

For Petitioners : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed challenging the order dated 23.08.2021 passed in R.E.P.No.39 of 2012 in O.S.No.645 of 1997 on the file of the learned Principal District Munsif, Namakkal.

2. The learned counsel for the petitioners submitted that, there was a decree passed against the defendants 1 to 9 in O.S.No.645 of 1997 declaring the plaintiff in the suit, namely, Komarasamy has the right in the suit property and for recovery of possession. It appears that, there is no appeal against this judgment and decree. Therefore, the judgment and decree



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passed in O.S.No.645 of 1997 has become final. It is the further submission of the learned counsel for the petitioners that, the plaintiff Komarasamy died and his legal representatives have filed R.E.P.No.39 of 2012 for executing the decree. The defendants 2 and 7 had also died and their legal representatives had been impleaded. Apart from defendants 2 and 7, the respondents 5 and 14 in the Execution Petition have also died. Without impleading their legal representatives, the petitioners are trying to execute the decree and this fact has brought to the notice of the learned Executing Court and the learned Executing Court rejected the petitioner's claim and ordered delivery. Against the said dismissal order, this Civil Revision Petition is preferred.

3. It is seen from the order of the learned District Munsif that, it is observed that though there are several legal representatives of the deceased respondents, it is enough that, the legal representatives, who are in possession be impleaded as respondents in the Execution Petition. It appears that, the alleged legal representatives of the deceased respondents 5 and 14 have not produced any material to show that, they are in possession of the



property. The petitioners have also not filed the death certificate and legal heir certificate of the 14th respondent. Taking all these facts, the Executing Court ordered delivery.

4. The suit was filed in 1997 and decreed on 05.04.2000. Execution Petition was filed in 2012. Petitioners have not produced any material to show that, they are in actual possession and entitled to the right to protect their possession. Therefore, this Court finds no reason to interfere with the order of the learned Principal District Munsif, Namakkal and the order dated 23.08.2021 passed in R.E.P.No.39 of 2012 in O.S.No.645 of 1997 and is hereby confirmed.

5. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

28.10.2021

Speaking order / Non-speaking order
Index : Yes / No

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C.R.P. (NPD) No.2313 of 2017
and C.M.P. No.17528 of 2017



To
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The Principal District Munsif,
Namakkal.



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C.R.P. (NPD) No.2313 of 2021
and C.M.P. No.17528 of 2021



G.CHANDRASEKHARAN, J.

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