



C.M.S.A.No.13 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.S.A.No.13 of 2003

&

C.M.P.No.4215 of 2003

Vikramathithan

...Appellant

Vs

1.Gopalakrishna Naidu (Died)

2.Ramamoorthy (Died)

3.Venkatathiri (Died)

4.Chandrammal (Died)

5.Anandha Mohan

6.Baskar

7.Prabhakaran

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8.Ramachandran

9.Laxmi Bai

10.Saraswathi

11.Sasikala

12.Ethirajulu Chettiyar

13.Prema

14.Meera

15.Prabhakaran

16.Kaliyamoorthy

17.Raja

18.Manoharan

19.Minor Someshwari

... Respondents

Prayer: Civil Miscellaneous Second Appeal is filed under Section 100 of CPC against the Judgement and Decree dated 31.12.2002 made in C.M.A.No.31 of 2000 on the file of Sub Court, Chidambaram reversing the fair and decreetal order passed in E.A.No.117 of 1997 in



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O.S.No.494 of 1973 dated 28.07.1999 on the file of the District Munsif Court, Chidambaram.

(Appeal is dismissed as abated against respondents 1 to 4 vide Court order dated 25.03.2022 made in C.M.S.A.No.13 of 2003)

For Appellant : Mr.J.Antony Jesus

For Respondents
1 to 4 : Dismissed as abated

For Respondents : Mr.R.Sunil Kumar
5 to 11

For Respondents : Not ready in notice
12 to 19

JUDGEMENT

This Civil Miscellaneous Second Appeal has been filed challenging the order passed by the Executing Court dismissing the Obstruction Petition filed by the appellant herein. The facts in brief are as follows.



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2. The respondents had obtained a decree for partition and in the final decree the property described as EFCD in the Advocate Commissioner's sketch was allotted to the decree holder. When the respondents herein who are the petitioners in the execution petition attempted to take possession through the Court Amin, the 2nd respondent who has no semblance of right to the property had obstructed their taking possession of the property and had given an Obstruction Petition to the Court Amin. The Court Amin therefore submitted the same to the Court.

3. The petitioners therein had submitted that the 2nd respondent was very much in possession of the property only as the son of the 1st respondent and he was therefore liable to handover vacant possession to the petitioners.



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4. The only defense taken was that the Obstruction Petition has been filed beyond the period of 30 days from the date of the obstruction. The Obstruction Petition is filed in E.A.No.117 of 1997 on the file of the District Munsif, Chidambaram. By order dated 28.07.1999, the Obstruction Petition was dismissed.

5. Challenging the same, the petitioners had filed C.M.A.No.31 of 2001 on the file of the Sub Court, Chidambaram. The learned Subordinate Judge by order dated 31.12.2002 was pleased to allow the appeal and set aside the order of the Trial Court. Challenging the same, the 2nd respondent is the appellant before this Court.

6. Mr.Antony Jesus, learned counsel appearing on behalf of the 2nd respondent / appellant would submit that the only challenge is on the ground of limitation. The learned counsel would submit that the Court Amin had attempted to take possession and had returned his



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warrant with his endorsement dated 04.02.1997 stating that the Obstruction Petition has been filed. However, the petition under Order XXI Rule 35 has been filed only on 14.03.1997, when it ought to have been filed on or before 06.03.1997.

7. The learned counsel would also produce a copy of the Amin's report. A perusal of the same would show that the Amin had attempted to take possession and had served the respondent with the order and the next hearing date i.e., 21.02.1997. Thereupon, the defendants have served an Obstruction Petition on the Advocate Commissioner. The warrant does not show that the respondents herein were present when the Obstruction Petition was filed. Therefore, it has to be taken that the respondents had come into the knowledge about the obstruction only on the date of hearing, i.e., 21.02.1997. The Obstruction Petition has been filed on 06.03.1997, within a period of 30 days. Therefore, the same has been filed well within 30 day period and I see no reason to



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interfere with this order.

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8. In the result, the Civil Miscellaneous Second Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

To

1.The Sub Court,
Chidambaram.

2.The District Munsif Court,
Chidambaram.



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P.T.ASHA, J.,

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