



C.R.P. No. 1066 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

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Basuvaiah (deceased)

- 1 B. Ravikumar
S/o Basuvaiah
- 2 B. Sivassami
S/o Basuavaiah
- 3 B. Sivamoorthy
S/o Basuavaiah
- 4 B. Rajiah
S/o Basuavaiah
- 5 B. Manimala
Daughter Of Basuvaiah
- 6 B. Manoj Kumar
S/o Basuavaiah
- 7 B. Prakash
S/o Basuavaiah



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8 B. Kamala
D/o Basuavaiah

... Petitioners

Versus

Kunhalankutty Hajee (deceased)

- 1 K. Beevi
W/o Kunhalankutty Hajee
- 2 Nabeesa
W/o Kunhalankutty Hajee
- 3 Abdurrahaman
S/o Kunhalankutty Hajee Itaris (deceased).
- 4 Maimoona
D/o Kunhalankutty Hajee
- 5 Ismail
S/o Kunhalankutty Hajee
- 6 Balkees
S/o Kunhalankutty Hajee
- 7 Khalid
S/o Kunhalankutty Hajee
- 8 Kairunisha
D/o Kunhalankutty Hajee
- 9 Rahamath
D/o Kunhalankutty Hajee



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10 Fathima
D/o Kunhalankutty Hajee

11 Mohamed
S/o Kunhalankutty Hajee

12 Ibrahim
S/o Kunhalankutty Hajee

13 Ayoop
S/o Kunhalankutty Hajee

14 Suhaib
S/o Kunhalankutty Hajee

15 Abuthahir
S/o Kunhalankutty Hajee

16 Asmabee
D/o Kunhalankutty Hajee

17 Sulakha
D/o Kunhalankutty Hajee

18 Sainaba
D/o Kunhalankutty Hajee

... Respondents

PRAYER : Civil Revision Petition filed under Sec.115 of Civil Procedure Code, praying to set aside the order and decretal order in E.P.No.40 of 2007 in O.S.No.59 of 1980, dated 01.02.2016 on the file of Subordinate Judge, Udagamandalam.



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For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.K.A.Ramakrishnan

ORDER

Challenging the order passed in E.P. No.40 of 2007 by the learned Sub-Judge, Udagamandalam, the decree holders preferred this Civil Revision Petition.

2. The decree holders are the plaintiffs filed a suit in O.S.No. 59 of 1980 for the relief of permanent injunction against the defendants in respect of the property as described in the plaint schedule in S.F.No. 138/1 and 112/1 situated at Gudalur Taluk, Nilgiris District measuring an extent of 11 acres. The suit was decreed in favour of plaintiffs by granting relief of permanent injunction and the appeal also ends in favour of plaintiffs. Thereafter, they have filed an Execution Petition in E.P.No.40 of 2007 praying the court to arrest the judgment debtors stating that they caused interference. The said application was dismissed by the trial court holding that the decree holders failed to comply the earlier order passed by this court



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in Civil Revision Petition proceedings in C.R.P.No. 3837 of 2012, in which the decree holders were directed to submit the proof affidavit along with particulars of date and time, on which the defendants caused interference. Furthermore, in respect of the suit properties, title is under dispute and the suit was filed in O.S.No.72 of 2012 before the District Munsif Court, Gudalur praying for the relief of declaration in respect of suit properties. Admittedly, the present petitioners/decreed holders also contested the said suit and the decree holders not furnished proper particulars of the alleged interference caused by the judgment debtors and also they admits that some of the portion was under the land acquisition proceedings, besides, the decree holders unable to submit proper survey numbers for the suit properties and in toto, they have not furnished proper particulars of date and time, on which the judgment debtors caused interference, thereby the application was dismissed.

3. The learned counsel appearing for Revision Petitioners argued that in the year of 1981, they have obtained a decree for permanent injunction against the defendants and when they caused interference, they filed a suit



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along with documents showing the particulars of interference caused by the judgment debtors, but the trial judge without properly appreciating those documents, dismissed their claim. Hence, they prayed to set aside the findings. Further, the decree holders also submitted that it is the duty of the executing court to implement the decree and when the decree is for injunction is restricted, it is the obligation of the court, at the instance of judgment debtor to abate the nuisance. But, the executing court failed to appreciate the said fact and erroneously dismissed the Execution Petition. Hence, they prayed to set aside the findings of the Executing Court.

4. By way of reply, the learned counsel for Judgment Debtors submitted that the suit property is under their possession and in respect of title, they filed a suit in O.S.No. 72 of 2012 as per the direction given by this court and the same was contested by the decree holder. Till date, the title is under dispute. Hence, the decree holders are not entitled to proceed with the execution petition.



5. Heard and considered rival submissions made by learned counsel for Revision Petitioners as well as Respondents and perused the records.

6. Considering the submissions of both sides and on perusal of records, it reveals that after passing the decree in the suit in the year of 1981, the decree holders preferred execution petition in E.P.No.40 of 2007 praying the court to arrest the judgment debtors as they caused interference. At that time, they have not enclosed the proof affidavit as required under Order 21 Rule 11(a) of C.P.C. Hence, the said application was dismissed. Against which, they preferred a Civil Revision Petition in C.R.P.No.3837 of 2012, wherein this court directed the decree holders to file proof affidavit giving details of violation of decree and thereafter, the executing court shall dispose the Execution Petition according to law. Thereafter, the decree holders were given opportunity to file proof affidavit by giving details of violation of decree. But, again the matter was taken up, the decree holders have not furnished the said proof affidavit as directed by this Court in C.R.P. proceedings. Hence, the Execution Petition was again dismissed by the trial judge. But, the learned counsel for Revision Petitioners submitted that they



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have furnished Ex.P1 to P22 showing the interference caused by the judgment debtors, but it was not properly appreciated by the trial judge.

7. On perusal of records, it would clearly reveals that the trial court elaborately discussed in the order about the submissions of decree holders as well as the submissions of judgment debtors. So, as per the earlier report, the decree holders have not furnished any proof affidavit with particulars of date and time on which the respondents caused interference, which is necessary to implement the order of arrest in the Execution Petition, but the decree holders failed. Therefore, the reasons assigned by the trial judge, as such is maintainable, which needs no interference. Accordingly, this Civil Revision Petition is dismissed as no merits. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

Sub-Judge,
Uthagamandalam.

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