



CRP.No.3434 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 28.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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and

CMP.No.18210 of 2022

1.H.B.Masthan

2.H.Shabjaan

... Petitioners

Vs.

1.H.Abdullaha

2.H.Hasan

3.I.Imtiyaz

4.I.Ashraf

5.A.Fairoz

6.A.Ameen

7.A.Shannu Ma

8.V.Jayakumar

Respondents

...

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the



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learned Additional District Judge, (FTC) Vellore, dated 25.03.2022 made in I.A.No.1 of 2019 in O.S.No.56 of 2019, by allowing this Civil Revision Petition and to grant such other relief.

For Petitioners : Mr.S.Silambarasan
for Mr.W.M.Abdul Majeed

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition for stay filed by the petitioners seeking stay of further proceedings in E.P.No.75 of 2013 in O.S.No.90 of 2012.

2. The petitioners have filed the present suit seeking a declaration that the decree passed in O.S.No.90 of 2012 was null and void and not binding upon the plaintiffs and also for other reliefs.

3. Earlier the 8th respondent herein filed a suit for



declaration and recovery of possession against the present revision petitioners and others in O.S.No.90 of 2012. The present petitioners who are arrayed as defendants 5 & 6 in O.S.No.90 of 2012 remained exparte and an exparte decree for possession was passed by the Court. Thereafter, the 8th respondent herein filed an execution petition in E.P.No.75 of 2013. The petitioners after service of notice in the execution petition failed to file a counter and remained exparte, thereafter, delivery was ordered. Subsequently, the petitioners filed the present suit seeking declaration that the decree passed in O.S.No.90 of 2012 was null and void and not binding on the plaintiffs.

4. The petitioners herein failed to raise any objection either in the original suit in O.S.No.90 of 2012 or in the execution proceedings in E.P.No.75 of 2013. In both the proceedings, the petitioners conveniently remained exparte and allowed the decree to be passed against them in the suit as well as the execution petition and thereafter, the present suit has been filed by the petitioners. Therefore,



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they are not entitled to seek stay of execution of decree passed in O.S.No.90 of 2012, which had attained finality.

5. The Court below rightly refused to exercise the discretion in favour of the petitioners and dismissed the I.A.No.1 of 2019 seeking stay of execution in E.P.No.75 of 2013. If at all, the petitioners want to raise any objection, they can raise the same by following due process of law and by filing their counter in the execution petition. Therefore, I do not find any infirmity in the order passed by the Court below.

6. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
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To

The Additional District Judge (FTC) Vellore.



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S.SOUNTHAR, J.

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