



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

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Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.1897 & 1903 of 2017

and

CMP.No.9196 of 2017

- 1.Rajendran (died)
- 2.R.Chandra
- 3.Vellaiyammal
- 4.R.Ramachandiran
- 5.R.Gowdham
- 6.R.Shankar
- 7.R.Chandran

... Petitioners (in both CRPs)

Petitioners 2 to 7 brought on record as LR's of the deceased sole appellant, Rajendran vide Court order dated 01.07.2021 made in CMP.No.20384 of 2018 in CRP No.1897/17.

v.

- 1.K.Arumugam
- 2.Mohan Prabhu
- 3.Sarathkumar

... Respondents (in both CRPs)

Prayer in CRP.No.1897 of 2017: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order dated 16.12.2016 in REP No.26 of 2014 in O.S.No.36 of 2008 on the file of the Sub court, Rasipuram.



Prayer in CRP.No.1897 of 2017: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order dated 07.03.2017 in REA No.8 of 2017 in REP No.26 of 2014 in O.S.No.36 of 2008 on the file of the Sub court, Rasipuram.

For Petitioner	..	Mr.T.Dhanyakumar, in both CRPs
For R1 & R2	..	Mr.C.Prakasam, in both CRPs
For R3	..	No appearance

COMMON ORDER

Both the Civil Revision Petitions originally emanated from a decree passed in O.S.No.36 of 2008, which suit was pending on the file of the Sub Court, Rasipuram and in which a judgment and decree had been passed on 20.12.2013.

2. However, the respondents herein / plaintiffs are still not able to enjoy the fruits of the decree. The suit had been filed for declaration and for seeking delivery of a particular portion of property. Questioning the said judgment and decree, the revision petitioners herein had filed AS.No.17 of 2014. That is pending on the file of the Principal District Court, Namakkal. No stay had been granted. Since stay had not been granted the respondents herein / plaintiffs filed REP No.26 of 2014



seeking delivery of possession. They also filed CRP No.671 of 2016 seeking early disposal of REP No.26 of 2014. A learned Single Judge of this Court had directed that the said Execution Petition should be disposed within a period of three months from the date of that particular order. It is more than three years, as on date, still the Execution Petition is pending.

3.In REP.No.26 of 2014, the revision petitioners filed REA No.8 of 2017 questioning the validity of the decree taking advantage of Section 47 of CPC. REA No.8 of 2017 was dismissed by an order dated 07.03.2017 and questioning that particular order CRP (NPD) No.1903 of 2017 had been filed. After that REP No.26 of 2014 seeking delivery of possession had also been ordered and questioning that particular order CRP (NPD) No.1897 of 2017 had been filed.

4.Since common arguments are advanced in both the Civil Revision Petitions, a common order is passed.

5.Without entering into merits of the case, since the revision petitioners had filed an Appeal in A.S.No.17 of 2014, which is now pending on the file of the Principal District Court, Namakkal, it would only be appropriate that an opportunity is given to that particular appellate Court to examine the issues on merits. Insofar as the Execution



Petition is concerned the Executing Court is bound within the four corners of the decree and also bound by the directions of this Court in CRP (NPD) No.671 of 2016 calling upon the Executing Court to dispose of the Execution Petition. Therefore, the Executing Court should proceed further to dispose of REP No.26 of 2014.

6. The revision petitioner cannot file an appeal on the one hand and also file an application under Section 47 of CPC., on the other hand. The wordings of Section 47 of CPC., would indicate that all questions between the parties with respect to the judgment or decree passed arising in the suit should be decided in the Execution Petition and not by way of a separate suit. An Appeal Suit or a First Appeal is an extension of the Original Suit proceedings, wherein, evidence recorded is re-appreciated and opportunity may also be granted to let in further evidence.

7. Therefore, it can also be reasonably interpreted that all issues should be decided only in the Execution Petition and not by way of another suit, which should also include an Appeal Suit or a First Appeal.

8. The revision petitioner appears to have filed an Appeal and also filed an Application under Section 47 of CPC. He can pursue one of the two options and it would only be appropriate that he pursues A.S.No.17 of 2014, since that goes to the root of the reasons given in the judgment



in O.S.No.36 of 2008. If at all delivery is taken by the respondents.

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9.The petitioners herein, and if he later succeeds in the Appeal he can urge that an order should be passed for restitution. It all depends on the nature of judgment passed in the Appeal.

10.Therefore, I would dismiss both the Civil Revision Petitions and direct the Executing Court to abide with the directions in CRP No.671 of 2016 and also direct the Principal District Judge, Namakkal to dispose of A.S.No.17 of 2014 on or before 31.10.2022.

11.With the above observation, both the Civil Revision Petitions are dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

23.03.2022

Internet:Yes/No

Index:Yes/No

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To

The Sub Court, Rasipuram.

The Principal District Court, Namakkal.



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C.V.KARTHIKEYAN,J.

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