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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(NPD).No.3974 of 2017
and
CMP.No.18542 of 2017

1.P.Selvam
2.Sridevi
3.P.Muthukumar

..Petitioners/Respondents

Vs.

1.Ashok Kumar Jain
2.Meera Devi

..
Respondents/Plaintiffs

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 29.08.2017 passed in E.A.No.77 of 2008 in E.P.No.5 of 1998 on the file of the Sub-ordinate Judge, Ponneri.

For Petitioners : Mr.N.Nithianandam

For Respondents : Mr.V.Lakshmi Narayanan

for Mr.D.Murugan

O R D E R

The present Civil Revision Petition arises out of an order dated 29.08.2017 passed by the learned Sub-Judge, Ponneri in E.A.No.77 of 2008 in E.P.No.5 of 1998.

2. The said E.P.No.5 of 1998 had been filed in O.S.No.50 of 1992 on the file of the Sub-Court at Thiruvallur. O.S.No.50 of 1992 had been filed by the 1st respondent herein, against one A.N.Perumalsamy, who is the father of the revision petitioners, seeking specific performance of an agreement of sale dated 20.03.1988 and for consequential reliefs.

3.In that particular suit, A.N.Perumalsamy, the defendant had remained exparte and therefore, an exparte judgment and decree was passed on 27.04.1994. Pursuant to said exparte judgment and decree, E.P.No.5 of 1998 had been filed, calling upon the Court to execute the sale deed in accordance with the



agreement between the plaintiff therein / 1st respondent herein and A.N.Perumalsamy, the father of the revision petitioners.

4. In that particular E.P.No.5 of 1998 the revision petitioners had filed E.A.No.77 of 2008 under Order 21 Rule 26 of C.P.C., to stay all further proceedings in the said Execution Petition pending disposal of a suit, which had been filed in the year 1995 and finally renumbered as O.S.No.64 of 2014 and pending on the file of the IV-Additional District Court at Ponneri.

5. The said suit in O.S.No.64 of 2014 was originally filed as O.S.No.367 of 1995 before the Sub-Court at Thiruvallur and after three subsequent transfers had finally metamorphized itself as O.S.No.64 of 2014. It is a suit for partition and separate possession with respect to the very same property, which was the subject matter of the agreement between the 1st respondent herein and A.N.Perumalsamy, the father of the petitioner.

6. Let me not enter into any discussion on the merits of the said judgment and decree in O.S.No.50 of 1992 eventhough, the learned counsel for the revision petitioners invited this Court to enter a discussion on the same. It might not be proper on the part of this Court to express any views on that particular issue in view of the nature of the order to be passed.

7. I shall confine myself to the order or in E.A.No.77 of 2008, which is an application under Order 21 Rule 26 of C.P.C., seeking to stay further proceedings in E.P.No.5 of 1998. It appears from the order passed, that the learned Sub-Judge, Ponneri had held and observed that the petition has no merits and had been filed only to protract the main Execution Petition.

8. It had been stated that the revision petitioners / the petitioners in E.A.No.77 of 2008 had been impleaded only as legal representatives of late A.N.Perumalsamy and therefore, it had been observed, they cannot have any independent right over the suit property. That again is an issue, which I will leave it open, I would not express any view on that particular observation by the learned Sub-Judge, Ponneri.

9. However, in view of the arguments advanced that an arguable case is available for the revision petitioners, let me strike a balance and eventhough the order dated 29.08.2017 is not interfered by me, which implies that the revision petition stands dismissed, still I would grant opportunity to the petitioners herein to file necessary application in manner known to law, if at all, they have any grievance over the judgment and decree in O.S.No.50 of 1992 dated 27.04.1994 and passed by the Sub-Court at Tiruvallur. It is for the revision petitioners to



work out their remedies in manner known to law. If any such application is filed, I am confident that the Sub-Court at Ponneri would examine it and also adjudicate it again in manner known to law. No further observations are required.

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10. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:-

1. The Subordinate Court,
Ponneri.

2. The Subordinate Court
Tiruvallur

+1 CC to Mr.N.Nithianandam, Advocate sr 26890.

+1 CC to Mr.D.Murugan, Advocate sr 27177.

+3 CC to Mr.D.Murugan, Advocate sr 27177. (23/05/2022)

C.R.P (NPD) .No.3974 of 2017
and
CMP.No.18542 of 2017

SSN(CO)
SP(13/05/2022)
SB(23/05/2022)