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C.R.P.No.4148 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4148 of 2022
and
C.M.P.No.21650 of 2022

1.P.Eswari
2.P.Muruganantham
3.M.Radha

... Petitioners

Vs.

1.P.Balamani
2.R.Subramaniam
3.P.Kanniammal
4.A.Pappathi
5.A.Marimuthu
6.J.Magesh
7.M.Selvi
8.C.Kanagaraj
9.C.Perumal
10.R.Vasanthamani
11.C.Durai
12.M.Muthulakshmi
13.M.Priya
14.M.Malar

... Respondents

(Respondents 2 to 14 are given up)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Docket order dated 09.12.2022 in



E.P.No.19 of 2018 in O.S.No.129 of 1990 on the file of the Distrit Munsif Court, Udumalpet.

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For Petitioners : Mr.K.Selvaraj

ORDER

The Revision Petition has been filed against the Docket order dated 09.12.2022 in E.P.No.19 of 2018 in O.S.No.129 of 1990 on the file of the Distrit Munsif Court, Udumalpet.

2. The first respondent is the plaintiff, filed the suit in O.S.No.129/1990 for Partition and Separate Possession. The trial Court passed a preliminary decree in the year 1995 itself, allowing 1/7th share to the first respondent/plaintiff. The preliminary decree was challenged in A.S.No.195 of 1997 and during the pendency of the appeal suit, a registered Settlement Deed was executed in favour of one Mr.Paramasivam, settling 3 acres of land allotted to his mother. The said Paramasivam was under the impression that the appeal suit was pending and he was suffering from Cancer. The plaintiff in the suit filed I.A.No.557 of 2004 for passing a final decree, the said Paramasivam was set *ex-parte* in I.A.No.557 of 2004. However, the third defendant in the suit Mr.Subramaniam has filed a counter, stating that Subbathal had already executed a Settlement Deed in



favour of Mr.Paramasivam, settling her 3 acres of land in the year 1998 itself. The trial Court passed final decree on 23.11.2010 erroneously. Paramasivam died in the year 2013. The revision petitioners were not aware of the proceedings instituted either in O.S.No.129 of 1990, A.S.No.195 of 1995 and the final decree in I.A.No.557 of 2004.

3. The facts were not known to the revision petitioners herein. The revision petitioners filed IACFR No.1064 of 2022 before the Additional District Court, Udumalpet, to set aside the order of dismissal dated 20.07.2000 in A.S.No.1950 of 1997 along with a petition to condone the delay. The Executing Court by order dated 04.08.2022, has allowed the Execution Petition filed by the plaintiff and ordered for delivery. Even the factum of delivery was not brought to the knowledge of the revision petitioners by their then counsel. Only when the bailiff came to the property of the petitioner to execute the Warrant, they came to know that the delivery order was made on 04.08.2022. Immediately, the petitioners engaged a new counsel, who in turn, filed a petition to stay the Execution Proceedings and adjudicate the claim under Order XXI Rule 26 and Order XXI Rule 58 of C.P.C. The Executing Court did not granted stay of the order of delivery. The petitioners had got a chance of restoring the appeal suit in A.S.No.190



of 1997. Under those circumstances, the revision petitioners filed the present Revision Petition to stay all further proceedings in E.P.No.19 of 2018 in O.S.No.129 of 1990.

4. The Docket order impugned would reveal that the Execution Petition was filed for delivery as per the final decree dated 23.11.2010. Thus, the decree has to be executed. EP Court cannot go beyond the decree passed on 23.11.2010.

5. The findings of the trial Court in the Docket order is in consonance with law. The final decree in the Civil Suit was passed on 23.11.2010 and the appeal suit was also disposed of long back. Execution Petition was filed in the year 2018 and delivery was ordered based on the decree dated 23.11.2010. Now after a lapse of about 12 years, the revision petitioners cannot seek stay for the Execution Proceedings. The Revision Petitioners were not vigilant in pursuing the suit and the appeal suit, which were decided by the respective Courts and thus, now after this length of time, they cannot seek an order of stay against the EP Petition, which was already ordered and delivery was directed to be handed over by the Execution Court.



6. In view of the facts and circumstances, this Court do not find any infirmity or perversity in respect of the order passed by the trial Court in order dated 09.12.2022 in E.P.No.19 of 2018 in O.S.No.129 of 1990 and the same stands confirmed.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is closed.

14.12.2022

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Index : Yes
Speaking order

To

The Judge,
Distrit Munsif Court,
Udumalpet.



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S.M.SUBRAMANIAM, J.

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