



C.R.P(NPD)(MD).No.1548 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE **B.PUGALENDHI**

C.R.P(NPD)(MD).No.1548 of 2022

and

C.M.P(MD).No.6657 of 2022

1.K.Andal

2.K.Rajasekar

... Petitioners

Vs.

Vadivelan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C, to call for the records relating to the fair and executable order dated 13.07.2022 made in E.A.No.2 of 2022 in E.P.No.53 of 2021 on the file of the Sub-Court, Periyakulam and set aside the same.



C.R.P(NPD)(MD).No.1548 of 2022

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For Petitioner : Mr.R.Suriya Narayanan

For Respondent : Mr.M.Maharaja

ORDER

This Civil Revision Petition has been filed as against the fair and executable order, dated 13.07.2022 passed in E.A.No.2 of 2022 in E.P.No.53 of 2021, by the Sub Court, Periyakulam.

2. The learned counsel appearing for the petitioners submits that the petitioners herein have filed a suit for declaration and injunction against the respondent in O.S.No.49 of 2017 and the respondent has filed a suit in O.S.No.21 of 2014 for declaration and recovery of possession. In a common judgment and decree, the suit in O.S.No.49 of 2017 was dismissed and the suit in O.S.No.21 of 2014 was decreed. Against the common judgment and decree, the petitioners herein have preferred an appeal in A.S.No.22 of 2022 before the Principal District Court, Theni,



C.R.P(NPD)(MD).No.1548 of 2022

which is pending. In the meanwhile, the respondent has filed the Execution Petition for delivery. Hence, the petitioners herein have filed the stay petition in E.A.No.2 of 2022. However, the trial Court dismissed the petition filed by the petitioner on 13.07.2022. Under Order 21 Rule 26 CPC, the Executing Court has power to grant stay for a limited period. Without giving an opportunity to the petitioners, the trial Court is proceeding with the Execution Petition. If the delivery is effected during the pendency of the first appeal, which is a statutory right to the petitioners, the petitioners will be put into irreparable loss.

3. The learned counsel appearing for the respondent submits that the suit property was originally in the name of one Kannammal and the only legal heir of Kannammal is her brother, namely, Kannan. After her demise, the said Kannan had succeeded the suit property and he conveyed the title of suit property to his daughter by way of Will, dated 26.04.1983. Thereafter, his daughter, namely, Viji, has executed the power of attorney in favour of fifth defendant. By strength of the power of attorney, he had sold the suit property to the sixth defendant and one



C.R.P(NPD)(MD).No.1548 of 2022

Senbagapandian. The said Senbagapandian and the sixth defendant had sold the property to the respondent herein/seventh defendant by virtue of sale deed, dated 19.01.2011. Further, the petitioners cannot challenge the sale deed dated 19.01.2011, without challenging the prior encumbrances. After considering the materials available on record, the trial Court has granted the declaratory decree in favour of the respondent and granted two months time to the petitioners to deliver the property to the respondent herein. In order to drag on the proceedings, the petitioners have filed the present petition.

4. This Court considered the rival submissions made on both sides and perused the materials available on record.

5. It is seen from the records that the trial Court has passed the common judgment and decree in O.S.Nos.21 of 2014 and 49 of 2017, in favour of the respondent herein, wherein, the decree of declaration was granted in favour of the respondent herein and a permanent injunction was granted restraining the petitioners herein from making encumbrances



C.R.P(NPD)(MD).No.1548 of 2022

in respect of the suit property. Thereafter, the petitioners have preferred an appeal in A.S.No.22 of 2022 before the Principal District Court, Theni. In the meanwhile, the respondent herein has filed the Execution Petition in E.P.No.53 of 2021, which is pending. Pending the execution proceedings, the petitioners herein have filed the stay petition in E.A.No. 2 of 2022 before the Sub Court, Periyakulam. On 13.07.2022, the Sub Court, Periyakulam, by referring to the judgment of the Hon'ble Supreme Court of India in the case of ***G.Arumugam vs. P.Jeyaraman*** reported in ***2014(1) CTC 246***, has dismissed the petition by stating that the petitioner has to approach the Appellate Court for getting stay in execution proceedings. There is no error on the part of the Sub Court, Periyakulam, in dismissing the application filed by the petitioner, because, in order to get stay of the execution proceedings, the petitioner has to approach the Appellate Court. However, considering the fact that the appeal is pending in A.S.No.22 of 2022 before the Principal District Court, Theni, it is open to the petitioners to work out their remedy by filing necessary application for appropriate relief before the Appellate Court.



C.R.P(NPD)(MD).No.1548 of 2022

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6. Accordingly, this Civil Revision Petition is dismissed. No costs.

Connected miscellaneous petition is closed.

02.08.2022

Index : Yes/No
Internet : Yes
Speaking/Non-speaking order
ssb

To

Sub Court, Periyakulam



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C.R.P(NPD)(MD).No.1548 of 2022

B.PUGALENDHI,J

ssb

Order made in
C.R.P.(NPD)(MD).No.1548 of 2022

Dated:
02.08.2022