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CRP(MD)No.2053 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2022

CORAM:

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

CRP(MD)No.2053 of 2022
and
CMP(MD)No.9380 of 2022

1.Paulraj

2.Rejina Baby

: Petitioners

Vs.

Esther Rani

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 10.09.2022, made in E.P.No.6 of 2019 in O.S.No.163 of 2012, on the file of the learned District Munsif cum Judicial Magistrate, Bhoothapandy and set aside the same.

For Petitioners : Mr.A.Arumugam

for Mr.V.George Raja

For Respondent : Mr.P.T.Ramesh Raja

ORDER

This civil revision petition is filed as against the order dated 10.09.2022, passed by the learned District Munsif cum Judicial Magistrate, Bhoothapandy, in E.P.No.6 of 2019 in O.S.No.163 of 2012, in and by which, delivery was ordered by the Execution Court.



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2.The respondent / decree holder has filed E.P.No.6 of 2019 before the District Munsif cum Judicial Magistrate Court, Bhoothapandy, to execute the decree passed in O.S.No.163 of 2012. The suit was filed for mandatory injunction against this petitioner for removal of super structure in the suit property. The suit was decreed and the appeals preferred by the petitioners were also dismissed. Thereafter, the petitioners have filed a separate suit in O.S.No.2 of 2021 as against the decree holder for the relief of declaration to declare the decree passed in O.S.No.163 of 2012 as in-executable. This suit is still pending. While so, the Execution Court has passed an order of delivery. Hence, the petitioners have moved the instant revision petition.

3.Learned Counsel for the petitioners submitted that they have filed the suit in O.S.No.2 of 2021 as a consolidated suit to declare the decree passed in O.S.No.163 of 2012 as in-executable. The said suit is still pending. By referring the same, the petitioners have also filed E.A.Nos.3 & 4 of 2022 to re-open the execution petition and to mark the plaint in O.S.No.2 of 2021 in the execution petition. Though these applications were allowed, without considering the pendency of the suit in O.S.No.2 of 2021, the Execution Court has passed an order of delivery, as a one line order, without any discussion with regard to the suit pending in O.S.No.2 of 2021. He further submitted the specific extent



and the measurement of the super structure to be demolished were not given either in the plaint or in the decree and as such, the suit property cannot be identified on ground.

Therefore, he prayed for interference.

4.Learned Counsel for the respondent submitted that the suit was filed for removal of super structure in the suit property, which is a common pathway. The suit was filed in the year 2012 and it was decreed on 08.11.2017. The petition in E.P.No.6 of 2019 is pending from the year 2019. The first appeal preferred by the petitioners was dismissed and thereafter, S.A.(MD)No.572 of 2019 was filed before this Court and the same was also dismissed on 17.01.2020. Though the judgment and decree passed in O.S.No.163 of 2012 has been confirmed by this Court, the petitioners have filed a suit in O.S.No.2 of 2021 in order to drag on the execution proceedings further. The schedule of the suit property is very clear and the Execution Court can pass orders only based on the decree passed in the suit, which was already confirmed by the appellate Courts. After considering all these aspects, the Execution Court has passed an order of delivery and the same does not warrant any interference. Hence, he prayed for dismissal.

5.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.



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B.PUGALENDHI, J.

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6.The grievance of the petitioners is that the Execution Court has passed an order on 10.09.2022 as a one line order, without any discussions with regard to the other suit filed by the petitioners in O.S.No.2 of 2021. This suit was filed by the petitioners to declare the decree passed in O.S.No.163 of 2012 as in-executable. The fact remains that the decree passed in O.S.No.163 of 2012 was put into challenge before the first appellate Court as well as before this Court in S.A.(MD)No.572 of 2019. Both the Courts have negatived the appeals and confirmed the decree passed in O.S.No.163 of 2012.

7.Under such circumstances, this Court does not find any error in the order of delivery passed by the Execution Court based on the decree passed in O.S.No.163 of 2012. Accordingly, this revision petition stands dismissed. It is open to the petitioners to work out their remedy in the suit pending in O.S.No.2 of 2021, if they are so advised. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No

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Internet : Yes

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To

The District Munsif cum Judicial Magistrate,
Bhoothapandy.

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