



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD)No.8 of 2016
and C.M.P.No.15 of 2016**

- 1.S.Gajalakshmi (died
- 2.D.Subramani
- 3.S.Lalitha Kumari
- 4.S.Hemalatha
- 5.S.Nagalakshmi
- 6.S.Deva Manohari
- 7.R.Sarumathy
- 8.S.Jayachitra

... Petitioners

(1st petitioner died and petitioners 2 to 8
brought on record as legal heirs of the deceased
1st petitioner viz., S.Gajalakshmi vide Court order
dated 12.07.2023 made in C.M.P.No.10262 of 2023
in CRP.No.8 of 2016)

Vs.

- 1.S.Govindasami (died)
- 2.G.Dhanalakshmi
- 3.Pathmavathi
- 4.Thara
- 5.M.G.Venkateshan
- 6.M.G.Srinivasan
- 7.Geetha

... Respondents

(Respondents 2 to 7 brought on record
as legal heirs of the deceased sole
respondent viz., S.Govindasami vide
Court order dated 02.01.2017 made in
C.M.P.No.19919 of 2016 in C.R.P.No.
8 of 2016)



WEB COPY

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 26.11.2015 made in I.A.No.332 of 2015 in C.M.A.No.15 of 2015 on the file of the Sub Court, Poonamallee.

For Petitioners : Mr.D.S.Ramesh

ORDER

The revision has been preferred against the dismissal of the application in I.A.No.332 of 2015 in C.M.A.No.15 of 2015 on the file of the Sub Court, Poonamallee.

2. An application in I.A.No.332 of 2015 had been filed for stay of all further proceedings in E.P.No.140 of 2008 on the file of the District Munsif Court at Ambattur. The 1st respondent/decreed holder was successful in obtaining a decree with respect to the following schedule of properties:

“Schedule of Property

A. Schedule

House and ground measuring East to West 35' on the north 32' on the south and north to south 57' on the east and 60', on the west bounded on the north by the property in the possession of one Arumuga Nadar and one Nalani, south by the Korattur Road, east by the house of Radhakrishnan and west by the property of one Subramanian in Varadharajapuram, Ambattur, Saidapet

Taluk.



B. Schedule

Thatched structure and ground measuring about east to west 10' and north to south 60' bounded on the east by the property in the possession of the plaintiff, west by Subramanian, north by Arumugha Nadar and south by the road, in Varadharajapuram, Ambattur, Saidapet Taluk. ”

The recovery of possession is with respect to the B schedule property.

3. The suit in O.S.No.169 of 1977 was decreed on 22.08.1979. To execute the decree, E.P.No.140 of 2008 was presented. In the execution proceedings, an obstruction petition came to be filed by the 1st petitioner in E.A.No.31 of 2011. The obstructor had filed O.S.No.703 of 1985 praying for a decree not to execute the decree in O.S.No.169 of 1977. The suit was dismissed on 18.07.1994. Challenging the same, a regular appeal was preferred in A.S.No.14 of 1995 and the same was allowed on 08.12.1995. Aggrieved by the said judgment and decree, the decree holder in O.S.No.169 of 1977 filed S.A.No.217 of 1997. The said Second Appeal was allowed on 09.01.2007.

4. After succeeding in the Second Appeal, the plaintiff had filed the E.P. for the purpose of executing the decree and taking possession of the property. At the time of taking delivery, the 1st petitioner obstructed the same stating that the property, for which the decree had been obtained, is situated in plot No.4, whereas she is in plot No.3 and therefore, the decree holder cannot take execution.



WEB COPY

5. The Executing Court rejected this argument, against which C.M.A.No.15 of 2015 was preferred by the 1st petitioner. In the said C.M.A., I.A.No.332 of 2015 was filed for stay of all further proceedings in E.P.No.140 of 2008, which came to be dismissed. The ground being that objection raised by the 1st petitioner had already been decided by the High Court in S.A.No.217 of 1997 and therefore, there is no case for granting stay of execution.

6. Mr.D.S.Ramesh, learned counsel for the petitioners would submit that being delivery of possession, the party is entitled for stay of execution of the decree.

7. Heard the learned counsel for the petitioners. I have gone through the records.

8. The relationship between the plaintiff and defendant is not in dispute. Govindasami, 1st respondent, is the plaintiff. He had filed a suit against his brother S.Ramu for recovery of possession of B schedule mentioned property. In so far as A schedule mentioned property is concerned, patta has already been granted by the Government in his favour. S.Ramu is none else the husband of the 1st petitioner, Gajalakshmi. She had agitated the matter till the High Court and had lost her case. To reopen the entire issue again by way of an obstruction petition has been nipped by the Executing Court. The decree is of the year 1977, 46 years have already lapsed and till



date, the decree holder has not seen the fruits of the decree. The Court should assist only a decree holder and not a person, who has agitated her rights in a Second Appeal and lost her case. The learned First Appellate Judge has not found a prima facie case in favour of the 1st petitioner and therefore, it had rightly dismissed the stay application.

9. The narration of the aforesaid facts make it clear that the idea of the obstructor is somehow or the other, to ensure that the decree holder does not get possession of the property. I find no reason to differ from the view of the lower appellate Court in I.A.No.332 of 2015 dated 26.11.2015.

10. Accordingly, the Civil Revision Petition is dismissed. The learned Subordinate Judge, Poonamallee, is requested to take up C.M.A.No.15 of 2015 and dispose of the same within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

12.07.2023
(2/2)

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
kj



WEB COPY

CRP(PD)No.8



V.LAKSHMINARAYANAN,J.

Kj

To

The Subordinate Judge, Poonamallee.

C.R.P.(PD)No.8 of 2016
and C.M.P.No.15 of 2016

12.07.2023
(2/2)