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C.R.P.No.2523 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.2523 of 2022

and

C.M.P.No.12944 of 2022

1.Sivalingam

2.Rasathi

... Petitioners

Vs.

N.Damodharan

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 23.06.2022 in Unnumbered E.A.___/2022 (CFR No.1871) in E.P.No.86 of 2019 in O.S.No.652 of 2015 on the file of the I Additional District Munsif, Erode is even otherwise illegal, incompetent and without jurisdiction and is liable to be set aside.

For Petitioners : Mr.V.Lakshminarayanan

For Respondent : Mr.V.S.Kesavan



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ORDER

The civil revision petition is filed against the fair and decretal order dated 23.06.2022 in unnumbered E.A.____/2022 (CFR No.1871) in E.P.No.86 of 2019 in O.S.No.652 of 2015.

2. The revision petitioners are the judgment debtor and the defendant in the Original Suit, which was filed by the respondent in O.S.No.652 of 2015 for recovery of possession of the Suit scheduled mentioned property. The Suit was decreed in favour of the respondent / plaintiff and the respondent being a decree holder filed E.P.No.86 of 2019. The Execution Petition was also allowed and more specifically, delivery was also ordered by the Execution Court. At that point of time, the revision petitioners filed E.A. under Section 47 and 151 of Code of Civil Procedure raising certain objections. The objections mainly raised by the revision petitioners are that there is finding in the judgment of the Trial Court in O.S.No.652 of 2015 that no tenant-landlord relationship existed between the plaintiff and defendants. Thus, the Trial Court has no jurisdiction to deliver judgment and decree and the Suit ought not to have been entertained at all. In view of the said observations, the Trial Court loses its pecuniary jurisdiction and thus, the decree is non-executable.



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3. The Execution Court considered the said issues and elaborately discussed about the judgment passed in O.S.No.652 of 2015 and arrived at a conclusion that it is an observation made by the Trial Court and such an observation made in the judgment would not constitute a ground for the judgment debtor to invalidate the judgment and decree, which was otherwise passed on merits and in accordance with law.

4. This Court is of the considered opinion that certain wrong, mistake or erroneous observations are made in the judgments and those cannot be taken as a ground for the purpose of nullifying the validity of the decree passed. Observations are made based on certain inferences or based on certain documents or based on the arguments advanced on behalf of the respective parties. If at all any of the parties considered the judgment as erroneous judgment, then the remedy is to prefer an appeal and not to file an E.A, so as to invalidate the execution order passed by the Execution Court in accordance with the Code of Civil Procedure.



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5. Judgment once passed becomes final. The scope of re-adjudication of merits including the point of execution procedures is restricted and the Court cannot revisit the validity of the judgment and decree passed in Original Suit and Execution Proceedings. In the event of entertaining such grounds the Execution Proceedings will become an Appeal, which is impermissible. Certain good grounds may be available to the judgment debtor after disposal of the Suits. However, such good grounds may not be a point for denying execution of a decree in favour of the decree holder and thus, the grounds for an Appeal cannot be taken as nullifying the judgment and decree already in force.

6. The Scope of Execution Proceedings cannot be expanded for the purpose of re-adjudication or adjudication of new grounds or issues raised by the judgment debtor. Once the decree is passed, the decree holder is entitled to enjoy the fruits of the decree and the scope of Section 47 to raise certain objection, cannot be expanded for the purpose of adjudication of issues on merits though such grounds may be good enough to consider in an Appeal.



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7. Therefore, the Trial Court proceeded in a right perception and rejected the application even without numbering the same. The Trial Court made a finding that the petitioner has not raised any such jurisdiction point or otherwise during the adjudication of the Suit and mere observation made in the judgment would not be a ground to deny execution of the decree in favour of the decree holder.

8. In the present case, the execution petition filed by the respondent / plaintiff in E.P.No.86 of 2019 was allowed and the delivery was ordered on 08.12.2021. Almost one year and two months lapsed and the delivery ordered has not been executed as of now. It is an unfortunate situation, where the decree holders after obtaining a decree from the Court is struggling to execute a decree. Such a situation is violative of spirit of the civil proceedings and the Courts have repeatedly held that the Execution Proceedings are to be disposed of within a period of six months. In the present case, the Execution Petition was filed in the year 2019 to execute the decree passed in O.S.No.652 of 2015 on 28.02.2019. Almost three years lapsed and the decree has not been executed. In the Execution Proceedings, the Court concerned ordered delivery on 08.12.2021 and thereafter, the revision petitioner / judgment debtor filed



E.A and dragged on the proceedings.

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9. The learned counsel for the revision petitioner states that the petitioner preferred an Appeal. However, it is not even numbered as of now. This being the factum, the petitioner has not made out any acceptable ground for the purpose of interfering with the order impugned passed by the Execution Court.

10. Accordingly, the fair and decretal order dated 23.06.2022 in Unnumbered E.A.____/2022 (CFR No.1871) in E.P.No.86 of 2019 in O.S.No.652 of 2015 stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.2523 of 2022 is dismissed. No costs. Connected Miscellaneous Petition is closed.



11. The respondent / decree holder is entitled to seek the aid of the Jurisdictional Police and recover the possession of the Suit Scheduled Mentioned Property immediately. In the event of recovery, the Jurisdictional Police shall be accompanied by the Court Bailiff and evict the revision petitioner / judgment debtor and hand over the possession to the decree holder.

02.02.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Judge,
I Additional District Munsif,
Erode.



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S.M.SUBRAMANIAM, J.

Jeni

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