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C.M.S.A.No.32 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.S.A. No. 32 of 2021

and

C.M.P. No. 3254 of 2021

Vanasundari
Appellant

...

Vs.

1.Pancharathinam
2.Subramanian
3.Packirisamy

... Respondents

Civil Miscellaneous Second Appeal filed under Section 100 read with Order XXI Rule 35 of Civil Procedure Code to set aside the fair and decretal order dated 22.10.2010 passed by the learned District Judge, Nagapattinam in C.M.A.No.31 of 2008 confirming the fair and decretal order dated 23.4.2008 passed by the learned Subordinate Judge, Nagapattinam in E.P.No.105 of 2006 in O.S.No.160 of 1994.

For Appellant : Mr.K.Raghuraman
For Respondent : Mr.G.Pugazhenth
for R2 and R3



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R1- Insufficient address
J U D G M E N T

This appeal has been filed against the fair and decretal order dated 22.10.2010 passed by the learned District Judge, Nagapattinam in C.M.A.No.31 of 2008 confirming the order dated 23.4.2008 passed by the learned Subordinate Judge, Nagapattinam in E.P.No.105 of 2006 in O.S.No.160 of 1994.

2.1 The first respondent herein/plaintiff filed a suit in O.S.No.160 of 1994 on the file of the Additional Subordinate Judge, Nagapattinam for partition. In the said suit, a preliminary decree was passed on 30.3.2000 and final decree also passed on 05.11.2004 in I.A.No.55 of 2000 in O.S.No.160 of 1994. As against the final decree, the appellant herein/3rd defendant filed A.S.No.37 of 2007 with the delay of 730 days and the appeal was dismissed confirming the order of the trial Court. Thereafter, the appellant filed second appeal with the delay of 50 days and the same is yet to be taken on file.

2.2 In the meanwhile, the first respondent/plaintiff filed E.P.No.105 of 2006 in O.S.No.160 of 1994 on the file of the Subordinate



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Court, Nagapattinam and the Execution Court passed an order of delivery on 11.06.2008. Challenging the said order, the appellant herein filed appeal in C.M.A.No.31 of 2008 before the District Court, Nagapattinam and the same was dismissed. Aggrieved over the same, the present second appeal has been preferred by the appellant.

3. The learned counsel for the appellant submitted that challenging judgment passed in A.S.No.37 of 2007, the appellant herein preferred the second appeal with the delay of 50 days and the same is yet to be taken on file and without waiting for the outcome of the appeal, the Execution Court simply passed the order of delivery.

4. On a perusal of the records, it is seen that as against the final decree the appellant herein has filed A.S.No.37 of 2007 with the delay of 730 days. In the meanwhile, the first respondent/plaintiff has filed E.P.No.105 of 2006 before Sub Judge, Nagapattinam. After due deliberation, the Execution Court came to the conclusion that, after the appeal was taken on file, there was no stay of operation of judgment and decree and there was no impediment against the execution of delivery and ordered delivery. In appeal, the appellant lost her case and now, she is



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before this Court. Further, the appellant not even produced the Second Appeal Number which was filed with the delay of 50 days.

5. Considering the above facts and circumstances, this Court is of the opinion that since there was no stay or impediment against the execution, the Executing Court ordered delivery, which was confirmed by the District Judge, Nagapattinam in C.M.A.No.31 of 2008 and hence, there is no perversity or infirmity in the judgment of the both the Courts below and this appeal is liable to be dismissed.

6. In the present case, there is no substantial question of law emerges to this Court to answer for it. Therefore, this Civil Miscellaneous Second Appeal is dismissed, at the admission stage itself. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

01.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

- 1.The District Judge,
Nagapattinam.
- 2.The Subordinate Judge,
Nagapattinam.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

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