



C.R.P.(MD)No.1495 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

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Mathusri Akkaboii Ammani Chatram Charities,
Pattukottai, represented by Hereditary Trustee,
formerly Nagoje Ramachandra Gatike Rao since died
Minor Anandakumar by guardian D.Sadasiva RaoPetitioner

Vs

1.Pakkiro Konar
2.Chinnian Konar
3.Ganapathi Konar ...Respondents

PRAYER: The Civil Revision Petition has been filed under Section 115 of Code of Civil Procedure, to set aside the order dated 02.09.2010 passed in C.F.R.No.611 of 1988 in Un-numbered E.P.No. of 2009 in O.S.No.357 of 1975 on the file of the District Munsif Court, Pattukottai.

For Petitioner :Mr.Niranjan S.Kmar
For R1 :Mr.S.Venkatesh



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ORDER

This Civil Revision Petition has been filed by the decree holder in a suit for recovery of possession.

2.The Revision Petitioner is a Trust and the it has filed O.S.No.357 of 1975 on the file of the District Munsif Court, Pattukottai, for the relief of recovery of possession. The said suit was decreed on 24.01.1976. Even though no appeal was preferred by the defendants, the plaintiff chose to file the execution proceedings only during the fag end of limitation period, i.e., on 20.01.1988. This execution petition remained unnumbered due to non payment of batta. The execution petition was returned, as many as 85 times for non payment of batta and for furnishing sufficient copies of execution petition. As a last chance, the decree holder was granted time till 16.08.2010 by way of an order dated 15.07.2010. Even thereafter, there was no attempt on the part of the decree holder to present the execution petition in order, so that the Court can number the same.

3.In view of the said lethargic attitude of the decree holder, the



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trial Court has invoked Order XXI Rule 17(1-A) CPC and rejected the execution petition on the ground that the delay is inordinate and the decree holder has not shown any interest in numbering the said application. Challenging the said order, the present revision petition has been filed.

4. According to the learned Counsel for the Revision Petitioner, the Trust has initiated more than 600 suits for recovery of possession from the tenants/trespassers. Therefore, the officials of the Trust were not able to properly follow the execution proceedings. He further contended that the suit having been filed as pauper, the Trust could not raise money to proceed with the litigation. Hence, there was a delay in numbering the execution petition.

5. Per contra, the learned Counsel for the first respondent had pointed out that no proper reasons have been assigned by the decree holder for not numbering the execution proceedings for nearly twelve years, which was filed during the fag end of limitation period.



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6.I have perused the records and heard the submissions made on either side.

7. A decree for recovery of possession has been passed in favour of the plaintiff on 24.01.1976 and it has become final. The execution petition was filed at the fag end of the limitation period, i.e., on 20.01.1988 and it was returned for nearly 85 times for non payment of batta memo and for furnishing of copies. On all the 85 occasions, same defects were pointed out, which remained un-rectified. Therefore, the Executing Court found that the decree holder was not at all interested in executing the decree.

8.This Court can understand that if the execution petitions were not re-represented in time. However, from the records, it could be seen that the execution petition has been re-presented for nearly 85 occasions. Therefore, the contention of the learned Counsel for the Revision Petitioner that in view of 600 similar suits, this suit cannot be taken care is not legally sustainable. The Executing Court has rightly exercised its power under Order XXI Rule 17(1-A) CPC in order to reject the application on the ground that the defects have not been rectified, despite



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expiry of 12 years period. I do not find any merits in the Revision Petition and hence, this Revision Petition is dismissed. No costs.

07.09.2023

Index : Yes/No

Internet : Yes/No

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To

- 1.The District Munsif, Pattukottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

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