



C.R.P.(MD)No.3143 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3143 of 2023
and
C.M.P.(MD)No.16160 of 2023

1.Sakthivel

2.Vijaya

3.Veerammal

4.Sadaiyappan : Petitioners/Respondents/Defendants

Vs.

A.M.Natchimuthu (died)

1.Pappal

2.Ramathal

3.Parthasarathy : Respondents/Petitioners/Plaintiffs

Prayer : This Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decretal order, dated 02.11.2023 made in E.P.No.7 of 2022 in O.S.No.86 of 2008 on the file of the learned District Munsif Court, Ottanchathiram.



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For Petitioners : Mr.S.Karthik

For Caveator : Mr.D.Venkates, for R 1.

ORDER

The Civil Revision Petition is directed against the order passed in E.P.No.7 of 2022 in O.S.No.86 of 2008, dated 02.11.2023 on the file of the learned District Munsif Court, Ottanchathiram, directing the removal of encroachments made by the revision petitioner, in pursuance of the decree passed in O.S.No.86 of 2008, dated 08.06.2015.

2. It is seen from the records that the respondents have filed a suit in O.S.No.86 of 2008 for declaration, permanent injunction and for mandatory injunction for removal of encroachments made by the defendants therein and the learned District Munsif, Ottanchathiram, after trial, has passed the judgment and decree, dated 08.06.2015, granting decree as prayed for and also directed the defendants to remove the encroachments within two months from the date of judgment.



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3. It is not in dispute that the revision petitioners have preferred an appeal in A.S.No.78 of 2018, challenging the judgment and decree passed in O.S.No.86 of 2008, but the same was dismissed for default and that they have filed an application to restore the appeal along with an application to condone the delay in filing the restoration petition and the same are pending. Meanwhile, the decree holders have laid the execution petition and after enquiry, the Executing Court has passed the impugned order.

4. The main contention of the revision petitioners is that since the appeal is pending, the execution proceedings cannot be proceeded with. But, as rightly contended by the learned counsel for the respondents, as of now, no appeal is pending and the petition to condone the delay of nearly 3 years is pending.

5. The revision petitioners have not raised any other valid reason or ground to impugn the order passed by the Executing Court. Moreover, the decree holders had obtained decree as early as on 01.11.2010, but they are not able to realize the fruits of the decree till now.



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6. Considering the above facts and circumstances of the case, the impugned order dismissing the petition cannot be found fault with. Hence, this Court concludes that Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

7. In the result, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

29.11.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

- 1.The District Munsif, Ottanchathiram.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Order made in
C.R.P.(MD)No.3143 of 2023
and
C.M.P.(MD)No.16160 of 2023

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