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C.R.P.No.327 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.327 of 2016
and
C.M.P.No.1736 of 2016

1.Tamilselvan
2.Ranjith Kumar

... Petitioners

Vs.

Ayyasamy (died)
2.Manikam
3.Veeramnai
4.Murugan
5.Ramesh
6.S.Arulmozhi
7.Erusappan
8.Chinnadurai
9.Shanthi

(R2 to R9 brought on record as LR's of the deceased
R1-viz., Ayyasamy vide court order dt. 04.01.2022 made
in CMP.No.8535/2019 in CRP.No.327 of 2016

...Respondents



C.R.P.No.327 of 2015

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, praying to call for the records relating to the Order and decretal order dated 29.09.2015 in E.P.No.82 of 2009 in O.S.No.723 of 1992 on the file of the Principal district Munsif, Kallakurichi.

For Petitioners	: M/s.A.L.Ganthimathi Senior Counsel for M/s.Prithiv Chopra
For respondent 1	:died
For Respondent 2 to 5 &9	: M/s.R.Meenal
For respondent 6 to 8	: not ready in notice

ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court attaching the properties of the petitioners described as 'B' schedule in the execution petition.

2. The respondent herein filed a suit for declaration of title and injunction against the 1st petitioner herein in O.S.No.723 of 1992 on the file of the learned Principal District Munsif, Kallakurichi. In the said suit, the compromise decree was passed based on the compromise memo filed by both the parties whereunder the 1st petitioner acknowledged the title and possession of respondent.

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3. According to the respondent, the 1st petitioner and his son, 2nd petitioner violated the terms of compromise decree and interfered with his possession and hence, he was constrained to file execution petition in E.P.No. 82 of 2009. In the execution petition, in spite of directions issued by Executing Court to file an affidavit of undertaking not to violate the decree, the petitioners failed to file any affidavit and hence, Executing Court ordered arrest. However, Amin who was deputed to arrest the petitioners returned the warrant on the ground that petitioners were absconding. In such circumstances, on application filed by the respondent, the Executing Court ordered attachment of property described in “B” schedule in execution petition. Aggrieved by the same, the petitioners are before this Court.

4. The learned Senior Counsel for the petitioners submitted that the compromise decree passed in O.S.No.723 of 1992 was not valid and the petitioners are taking steps to challenge the same and hence, the respondents are not entitled to execute the same and seek attachment of the property. The learned senior counsel further submitted that properties which are attached



now are not the subject matter of suit in O.S.No.723 of 1992 and hence, the Executing Court ought not to have attached the same.

5. It is seen from the records in the typed set of papers, a compromise decree has been passed in O.S.No.723 of 1992, suit for declaration and injunction filed by the respondent against the 1st petitioner herein. As per the terms of compromise decree, the 1st petitioner herein acknowledged the title and possession of the respondent. Till date, the petitioners have not taken any steps to set aside the compromise decree which was passed as early as 22.09.1992. The Executing Court cannot go beyond the decree and hence, when respondent/decree holder complains of violation of compromise decree, the Executing Court is empowered to attach the properties of the judgment debtor, who is absconding. It is not the case of the petitioners that the properties which are attached by the Executing Court are not their properties. In such circumstances, there is no irregularity or illegality in attaching the properties of the petitioners so as to make them obey the decree for injunction. I do not find any error in the order impugned in this revision.



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6. It is always open to the petitioners to appear before the Executing Court and file appropriate application for raising of attachment. If any such application is filed, the same shall be considered by the Executing Court in accordance with law.

7. Accordingly, the Civil Revision petition stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

26.02.2024

Index : Yes / No
Internet : Yes / No
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To
The learned Principal district Munsif, Kallakurichi.



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S.SOUNTHAR , J.

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