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CRP.No.4782 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.4782 of 2024
and CMP.No.26756 of 2024

M.Sivabalan

.. Petitioner

Versus

J.Nagalingam

.. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, to set aside the order dated 19.10.2024 passed by the learned District Munsif, Coonoor in E.P.No.11 of 2023 in O.S.No.107 of 2015.

For Petitioner : Mr.A.Immanuel

ORDER

Challenging the order of the Executing Court ordering delivery, the present revision is filed.

2. The suit has been originally filed in O.S.No.107 of 2015 for recovery of possession of the suit property and also for mesne profit. The



CRP.No.4782 of 2024

WEB COPY

suit has been decreed on 26.02.2021. As against which appeal is filed in A.S.No.8 of 2021 that has been dismissed on 14.03.2023 confirming the decree and judgment of the Trial Court. As against which, second appeal in S.A.No.615 of 2023 was filed before this Court and no stay has been granted. At this stage, the decree holder has filed EP.No.11 of 2023 to enforce the decree. The only defence taken by the respondent is that second appeal is pending before this Court, hence, EP cannot be proceeded till the disposal of the second appeal. The Trial Court negated such contention and ordered delivery. Hence, this revision.

3. Heard the learned counsel for the petitioner and perused the materials placed on record.

4. At this stage, this Court is of the view that order passed by the Executing Court does not require interference for the simple reason that mere pendency of the appeal will not operate as stay automatically. Therefore, mere pendency of the second appeal will not take away right of the decree holder to enforce the decree when it has not been stayed by the Appellate Court. Even delivery is effected, if the revision petitioner



CRP.No.4782 of 2024

WEB COPY

succeeds in the second appeal, he is not remedy less, it is always open for him to seek restitution invoking powers under Section 144 of CPC.

5. Accordingly, this revision stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

25.11.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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CRP.No.4782 of 2024

N.SATHISH KUMAR, J.,

dhk

To,

1.The District Munsif
District Munsif Court, Coonoor

C.R.P.No.4782 of 2024

25.11.2024