



C.R.P.(MD)No.2943 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2943 of 2023
and C.M.P.(MD).No.15163 of 2023

Sheik Dawood Ammal (Died)

1.A.Basheer Ahamad

2.ABuhari

3.Ralia

4.Rabiha

5.Mohamed Noordheen

... Petitioners/Judgment Debtors

Vs.

1.Mohammed Sheik Kadhi

2.Rameesha

3.Kuraisha

4.Hawaammal

... Respondents/Decree Holders

PRAYER : Civil Revision Petition is filed under Section 227 of Constitution of India, to set aside the fair and decretal order passed in E.P.No.5 of 2021 in O.S.No.159 of 2010, dated 03.08.2023 on the file of the Principal District Munsif's Court, Pattukottai, Thanjavur District.

For Petitioners : Mr.V.Karuna



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ORDER

This civil revision petition is filed to set aside the fair and decreetal order passed in E.P.No.5 of 2021 in O.S.No.159 of 2010, dated 03.08.2023 on the file of the Principal District Munsif's Court, Pattukottai, Thanjavur District.

2.Suit in O.S.No.159 of 2010 was filed by the respondent herein seeking the relief of Mandatory injunction, directing the defendants to remove the obstructions in the 'A' schedule property, for recovery of possession in respect of 'E1' schedule property in favour of the 4th plaintiff and for costs. The defendants entered appearance and filed their statement. After full trial, the suit was decreed as prayed for. Against which appeal suit in A.S.No.55 of 2012 was preferred by the defendants 1, 2, 4 and 5. That came to be dismissed by the Judgment and decree, dated 26.10.2017. Against which, second appeal in S.A.(MD).SR.No. 18362 of 2018 is filed. It is alleged that the appeal before the appellate Court was not prosecuted or processed in proper manner. According to the learned counsel for the petitioner, it is due to the death of the counsel



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on record before the appellate Court. Later, E.P. has been filed. The learned counsel for the petitioner would submit that even at the time of trial, Commissioner was appointed. But, he did not measure the property. Only a portion alone was measured. The survey number also differs. According to him, a chance must be given to him to prosecute the above said appeal. But, the petitioner did not prosecute or process the appeal in time.

3.A report was called for from the trial Court and the same was received and reads that after passing the order for delivery, the petitioners herein filed E.A.No.1 of 2023 to stay the proceedings. Now it is stated to be pending. Now, it appears that the petitioner is prosecuting two matters, one before the trial Court and another before this Court. Both petitions will not lie at the same time. The petitioner is directed to prosecute the E.A.No.1 of 2023 before the trial Court itself and workout his remedy.



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4. With the above said directions and liberty, this petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The Principal District Munsif, Pattukottai, Thanjavur District.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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