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**(2010) 08 MAD CK 0275**

**In the Madras High Court**

**Case No : C.R.P. (NPD) No"s. 2151 and 2152 of 2010**

S. Shanmugam

APPELLANT

Vs

S. Vasudevan, S. Sundaram, Saraswathy and Leelavathy

RESPONDENT

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**Date of Decision : 23-08-2010**

**Acts Referred:**

**Citation : (2010) 08 MAD CK 0275**

**Hon'ble Judges : G. Rajasuria, J**

**Bench : Single Bench**

**Advocate : K. Goviganesan, for the Appellant; A. Saran Raj, for R1 and R4 and E. Sampath Kumar, for R2, for the Respondent**

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## **Judgement**

G. Rajasuria, J.—Inveighing the order dated 07.12.2009 passed in E.A. Nos. 260 and 261 of 2009 in E.P. No. 117 of 2007 in O.S. No. 262 of 1988 by the learned Principal Subordinate Judge, Tiruppur, these civil revision petitions are focussed.

2. Heard both sides.

3. A "resume" of facts absolutely necessary and germane for the disposal of these two revisions as stood exposed from the records as well as from the submissions made by the learned Counsel would run thus:

The petitioner/decreed holder filed E.A. Nos. 260 and 261 of 2009 for police aid and break open lock respectively, so as to obtain delivery of possession of the property which was allotted in his favour in the final decree proceedings. While so, earlier the respondent Sundaram filed CRP Nos. 1815 and 1816 of 2009 and in that this Court passed orders. Paragraph Nos. 3 and 4 of the said order are extracted hereunder for ready reference:

3. During the course of hearing it is brought to the notice of this Court that Valliammal has since expired in the year 2007 unfortunately, in the orders passed by the Executing Court in E.A. No. 65 of 2009 and E.A. No. 64 of 2009, the third respondent Valliammal has been described as a person who is alive at

the time of passing of the order in the said Execution Applications and moreover, an executing Court has also observed in its order that she has no manner or right to refuse to hand over the suit property and also to lock the same when the third respondent, Valliammal has expired in 2007 and the said observation is an incorrect one and in fact a factual error has been committed by the Executing Court in this regard. On the simple ground alone this Court interferes with the orders of E.A. No. 64 of 2009 and E.A. No. 65 of 2009 and resultantly, allows the civil revision petition without costs.

4. In Fine, the civil revision petitions are allowed. The order of the Executing Court in E.A. No. 64 of 2009 and E.A. No. 65 of 2009 are set aside. However, it is made clear that the dismissal of E.A. No. 64 of 2009 and E.A. No. 65 of 2009 will not preclude the decree holder/first respondent in projecting proper applications before the Executing Court to seek appropriate remedy in the manner known to law. Consequently, connected Miscellaneous Petitions are closed.

4. Consequent upon the order passed by my learned Predecessor as aforesaid, the revision petitioner herein filed two separate E.As. and those matters are pending. The grievance of the petitioner is that the Executing Court is not taking up the matter and it is being dragged on. As such, he prays for direction for speedy disposal.

5. The learned Counsel for the respondents would submit that a second appeal is pending at the instance of one other party and whereas, the respondent Sundaram filed yet one other Second Appeal with a petition to get the delay condoned in filing the Second Appeal. However, he would state that so far no stay was obtained in the Second Appeal.

6. The learned Counsel for the petitioner would submit that mere filing of the Second Appeal would not operate as stay and it is for the lower Court to consider on merits the E.As. pending before it. I would like to point out that unless stay is granted by the appellate Court or the revisional Court, the lower Court is not bound to stay the proceedings. It is open for parties concerned to obtain stay if permissible. However, I would like to direct the Executing Court to proceed with the E.As as per law and deal with them as expeditiously as possible, by all means, within a period of six weeks from the date of receipt of a copy of this order.

Accordingly, these civil revision petitions are disposed of. No costs.