

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.08.2014

CORAM

THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

C.R.P.(NPD).No.403 of 2015
and
M.P.No.1 of 2015

D.Ramaswami

.. Petitioner

vs.

D.Palaniandi(Died)

1.Vetrivelan

2.D.Kasunathan

3.Meenakshi

4.Kuzhandiavel

5.P.Senthil

6.Vijayalakshmi

... Respondents

Civil revision petition filed under Section 115 of Code of Civil Procedure against the order dated 28.8.2014 passed by the Principal Subordinate Judge, Cuddalore, in I.A.No.187 of 2012 in O.S.No.493 of 1992.

For petitioner : Mr.S.K.Rakhunathan

For respondents : Mr.R.Rajavelavan

ORDER

The revision petitioner is the sole defendant in O.S.No.493 of 1992, on the file of the Principal Subordinate Judge, Cuddalore. The suit is for partition. The respondents herein are the plaintiffs in

O.S.No.493 of 1992. The suit property is a rice mill. A preliminary decree was passed in the suit on 26.10.1998.

2. Thereafter, the revision petitioner/defendant filed an appeal against the preliminary decree, before this Court, in A.S.No.861 of 1998, which was rejected by this Court on 22.02.1998. In the meantime, the respondents herein/plaintiffs filed I.A.No.10 of 1999 in O.S.No.493 of 1999, seeking appointment of Advocate Commissioner to hold enquiry with regard to the probable *mesne* profits from the suit rice-mill for the period mentioned in the decree and submit a report and thereafter, to pass a final decree for such amount.

3. It is stated that the Advocate Commissioner was appointed and he has also collected the evidence. However, I.A.No.10 of 1999 is yet to be disposed of.

4. In the meantime, after all these developments, the revision petitioner/defendant has handed over the key. After handing over the key, he has filed I.A.No.187 of 2012 in O.S.No.493 of 1992 for a direction to the respondents herein/plaintiffs to deposit at the rate of 2,500/- per month from the date of their taking possession i.e.

from 30.3.2010 till possession is handed over by them. A further prayer is made for appointment of third party receiver.

5. The learned Principal Subordinate Judge, Cuddalore, rejected the said I.A.No.187 of 2012 in O.S.No.493 of 1992 on 28.8.2014, which is challenged in this revision, by the revision petitioner/defendant.

6. Heard the learned counsel on both sides and perused the records.

7. It is useful to extract hereunder paragraph No.12 of the order dated 28.8.2014 passed in I.A.No.187 of 2012:

"12.The petitioner stated that the condition of the Rice Mill was not in running condition; even on the date of moving the application for possession of Rice Mill by the Respondents. There is no evidence that the respondents are earning money from the Rice Mill. In the circumstances, the expectation of the petitioner that the Respondents to pay Rs.2,500/- p.m.from the date of their taking possession is not acceptable. The petitioner has sought for more reliefs in one

Application. It is not maintainable as per the Procedural Laws. This point is answered accordingly."

8. In my considered view there is no illegality or infirmity in the said order. The suit has been pending from 1992, i.e. for the past 23 years. Though the preliminary decree was confirmed by this Court, no final decree is passed. Taking into account all these facts, the civil revision petition is dismissed and a direction is issued to the Subordinate Judge, Cuddalore, to complete the final decree proceedings and pass orders within a period of four months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

13.08.2015

msk

To

The Principal Subordinate Judge, Cuddalore

D.HARIPARANTHAMAN,J.

msk

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