

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM

THE HONOURABLE DR. JUSTICE. **S.VIMALA**

CRP (NPD)No.281 of 2014
and
M.P.No.1 of 2014

Ganesan

... Petitioner

..Vs..

1.Jayalaxhmi

2.Ravindran

... Respondents

Prayer:- Revision Petition is filed under Article 227 of Constitution of India filed against the fair and decretal order in C.M.A.No.1 of 2013 on the file of the Principal Sub Court, Pondicherry, dated 25.11.2013 in confirming the fair and decretal order in I.A.No.2089/2011 in I.A.No.1560/2009 in I.A.No.1779/2006 in unnumbered O.S. /2011, on the file of the III Additional District Munsif Court, Pondicherry (previously O.S.No.374/1998), on the file of the Principal Sub-Court, Puducherry, dated 05.11.2012.

For Petitioner : Mr.V.L.Nehru

For Respondents : Mr.S.C.Viswanath

ORDER

The revision petitioner is the third plaintiff in O.S.No.374 of 1998 on the file of the learned Principal Sub Judge, Pondicherry.

2. The suit has been filed seeking a) to declare that the plaintiffs 1 to 2 as the absolute owners of item Nos.1 & 2 of the suit property; b) to declare that the donation deed dated 05.01.1973 is invalid and c) permanent injunction.

3. The Plaintiffs 1 to 3 are the sons of deceased Arunachala Gounder and the first defendant is the daughter of the Arunachala Gounder. The second defendant is the Power of Attorney of the first defendant.

4. The suit in O.S.No.374 of 1998 was dismissed for default on 30.09.2005. An application in I.A.No.1779 of 2006, was filed to restore the suit in O.S.No.374 of 1998 and the same was transferred to III Additional District Munsif, Puducherry, for further proceedings and posted for enquiry on 16.03.2009. For non-appearance on 16.03.2009, the application in I.A.No.1779 of 2006 (for restoration) was dismissed for default.

5. To set aside the order dated 16.03.2009 and to restore the application in I.A.No.1779 of 2006, an application in I.A.No.1560 of

2009 was filed, the same was allowed and posted on 20.04.2011 for taking steps. But on 20.04.2011, the said case was not called and only on 09.06.2011, the petitioner came to know that the case was called and was dismissed for default.

6. Yet another application in I.A.No.2089 of 2011 has been filed by the 3rd plaintiff (plaintiff 1 & 2 are reported to be died and the 3rd plaintiffs is contesting the proceedings) under Order 9 Rule 9 C.P.C., praying to set aside the order dated 09.06.2011 and to restore the I.A.No.1560 of 2009. This application is also dismissed by the lower Court on 05.11.2012, stating that the application under Order 9 Rule 9 C.P.C., has been filed by the plaintiff for the 5th time in a single case, which is a clear abuse of process of Court.

7. Aggrieved over the same, the revision petitioner, as appellant has filed an appeal in C.M.A.No.1 of 2013 on the file of Principal Sub Judge, Pondicherry and the same was dismissed without costs on 25.11.2013, confirming the order of the learned III Additional District Munsif, at Puducherry dated 05.11.2012.

8. Challenging the same, this Civil Revision Petition has been

filed.

9. The learned counsel for the revision petitioner submitted that application under Order 9 Rule 9 C.P.C., was not filed for the fifth time, but, it is filed only for the second time and the Court under misconception, has chosen to dismiss the application.

10. It is represented that the plaintiff is willing to co-operate for the speedy disposal of the case and that the plaintiff is also ready to pay reasonable cost to the defendant so that the inconvenience caused to the defendant would get rectified.

11. The learned counsel appearing for the other side submitted that the defendant cannot be put to endless miseries and that if at all the Court is inclined to restore the suit, there must be a direction for time bound disposal of the suit itself.

12. Having regard to the submissions made on both sides, the suit will stand restored, subject to the plaintiff paying a sum of Rs.12,000/- (Rupees twelve thousand only) as costs to the defendant, within a period of two weeks from the date of receipt of a copy of this

order.

13. Thereafter, the trial Court shall dispose of the suit within a period of of three months after the payment of cost of Rs.12,000/- and on restoration.

14. With the above direction, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2016

Index : Yes/No
Internet: Yes/No
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To

The Principal Sub Court
Puducherry.

S.VIMALA.J

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