

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2233 of 2015
and M.P.No.1 of 2015

Muthavalli
represented by M.Easak Sahib
Santhaval Village, Polur Taluk,
Tiruvannamalai District.

... Petitioner

Vs.

Backiyam

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 04.03.2015 made in E.A.No.9 of 2015 in E.A.No.156 of 2014 in E.P.No.515 of 1982 in O.S.No.118 of 1976 on the file of the District Munsif Court, Polur.

For Petitioner : Mr.T.R.Rajaraman

For Respondent : Mr.G.Saravanan

ORDER

Challenging the fair and final order passed in E.A.No.9 of 2015 in E.A.No.156 of 2014 in E.P.No.515 of 1982 in O.S.No.118 of 1976 on the file of the District Munsif Court, Polur, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.118 of 1976 to declare that the suit property is a Wakf property and for possession of the same. After contest, the trial Court decreed the suit on 20.01.1979. Against which, the defendants preferred an Appeal in A.S.No.27 of 1979 on the file of the Subordinate Court, Tiruvannamalai. The Lower Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the suit. Against the judgments and decrees of the Courts below, the defendants preferred a Second Appeal in S.A.No.932 of 1988 and this Court, by its judgment and decree dated 25.02.1997, dismissed the Second Appeal for default. After the dismissal of the Second Appeal, the judgment and decree passed in O.S.No.118 of 1976 has become final.

3.Pursuant to the decree passed by the Courts below, the plaintiff filed an Execution Petition in E.P.No.515 of 1982 for taking possession of the property. Though the Execution Petition was filed in the year 1982, in the year 2014, the respondent, who is a 3rd party, filed an application in E.A.No.156 of 2014 under Order 21 Rule 99, 101 of the Civil Procedure Code. In the affidavit filed in support of the said petition, the 3rd party respondent has stated that she is in possession of the suit property for more than 30 years and that the suit property is a Government Poramboke land.

4.Mr.T.R.Rajaraman, learned counsel appearing for the petitioner submitted that the contention raised by the respondent in the application in E.A.No.156 of 2014 is contrary to the findings given by the Courts below and also pointed out that the Lower Appellate Court, in A.S.No.27 of 1979, has stated as follows:

“15. Point No.3: I have already stated that the suit property is a Muslim burial ground i.e. Wakf property. Exhibit B-1 A register extract would indicate that this is a burial ground and that the property continued as a Muslim burial ground for a very long time at least from 1935, since reference is made to R.D.O. in D.D.997735 / dated 2-8-1935 indicating that probably under this order, the property was classified as Muslim burial ground.”

Since it is a subject matter in E.A.No.156 of 2014, I am not giving any finding now on that aspect.

5.In the application filed by the respondent in E.A.No.156 of 2014, subsequently, she filed another application in E.A.No.9 of 2015 seeking permission to examine herself and six other officials on her side. In the affidavit filed in support of E.A.No.9 of 2015, the respondent has not stated any specific reason for examining six officials on her side. In paragraph - 2

of the affidavit, she has only stated that it is necessary to examine them on her side to prove her case.

6. When the proceeding is pending from 1976, even after a lapse of 40 years, the revision petitioner/plaintiff is not in a position to get possession of the property. No doubt, the rights of the parties can be decided in an application filed under Order 21 Rule 99 & 101 of the Civil Procedure Code, the same should not run contrary to the findings given by the Courts below. The respondent kept quiet for nearly 40 years and has come forward to file the present applications. The conduct of the party would only establish that the applications were filed only to drag on the matter for an indefinite period. The Execution Court had erroneously allowed the application in the absence of any acceptable reason given by the respondent for examining six officials on her side apart from herself. The Execution Court should not have allowed the application.

7. Accordingly, I set aside the fair and decreetal order passed in E.A.No.9 of 2015. The Civil Revision Petition is allowed.

8. Since the proceedings are pending from 1976, I direct the District Munsif, Polur to dispose of the application in E.A.No.156 of 2014 within a

period of four weeks from the date of receipt of a copy of this order and also dispose of the E.P.No.515 of 1982, which is also pending for more than 34 years, within a period of four weeks from the date of disposal of the application in E.A.No.156 of 2014 and report the same to the Registry of this Court.

9.The learned counsel appearing for the respondent submitted that the respondent has filed a suit in O.S.No.225 of 2007 on the file of the District Munsif Court, Polur for permanent injunction and the defendants in that suit have already filed their written statement and the same is ripe for trial and further submitted that the trial Court may be directed to dispose of that suit within a stipulated time.

10.However, Mr.T.R.Rajaraman, learned counsel appearing for the revision petitioner submitted that he has no instruction as to whether the petitioner is a party in the said suit and that any written statement has been filed by him in that suit.

11.Taking into consideration the submissions made by the learned counsel for the respondent and that the suit in O.S.No.225 of 2007 is pending from 2007, I direct the District Munsif, Polur to dispose of the suit

in O.S.No.225 of 2007, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. However, the pendency of the suit in O.S.No.225 of 2007 shall not stand in the way of the District Munsif, Polur in disposing of the Execution Petition in E.P.No.515 of 1982. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No

10.06.2016

Internet : Yes

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Note: Issue order copy on 14.06.2016.

To

The District Munsif Court,
Polur.

M.DURAIWAMY,J.
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