

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1001 of 2016
and
C.M.P.No.5620 of 2016

K. Srinivasalu

.... Petitioner

vs

A. Thanappa Udayar

.... Respondent

Civil Revision Petition filed under 227 of the Constitution of India to set aside the fair Order and decreetal order dated 16.7.2015 passed in E.A.No.39 of 2014 in E.P.No.26/2011 on the file of District Munsif cum Judicial Magistrate Court, Sriperumbudur.

For Petitioner : Mr.G. Dilip Kumar

For respondent : Mr.M. Chidambaram

ORDER

Challenging the fair and final order passed in E.A.No.39 of 2014 in E.P.No.26/2011 on the file of District Munsif cum Judicial

Magistrate Court, Sriperumbudur, the judgment debtor has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.403 of 2008 on the file of District Munsif, Tambaram for delivery of possession and for permanent injunction. Since the defendants remained absent, an exparte decree was passed by the trial Court on 28.06.2010. Pursuant to the decree passed in O.S.No.403 of 2008, the plaintiff filed an Execution Petition in E.P.No26/2011. Even in the execution petition, the defendants remained absent. Therefore, an exparte order of attachment was passed in the execution petition. Thereafter, the first defendant filed an application in E.A.No.39 of 2014 under Order 21 Rule 106 of Civil Procedure Code to set aside the exparte decree dated 22.04.2013. The application, filed by the first defendant, was contested by the plaintiff.

3. The Execution Court, taking into consideration the case of both the parties, dismissed the application, against which, the first defendant has filed the present civil revision petition.

4. It is brought to the notice of this Court that the first defendant has filed an application in I.A.No.484 of 2015 under Sec.5

of Limitation Act to set aside the exparte decree dated 28.06.2010. The learned counsel on either side submitted that the said application was allowed by the trial court and the application, filed by the first defendant in I.A.No.226 of 2016 under Order 9 Rule 13 of Civil Procedure Code is now pending.

5. When the matter is taken up for hearing today, the learned counsel appearing for the respondent/plaintiff submitted that the respondent has no objection for allowing the Civil Revision Petition and directing the District Munsif cum Judicial Magistrate Court, Sriperumbudur to allow I.A.No.226 of 2016 and dispose of the suit in O.S.No.403 of 2008 on merits and in accordance with law within a stipulated time.

6. Learned counsel appearing for the petitioner also agreed for the submissions, made by the learned counsel for the respondent.

7. Having regard to the submissions made by the learned counsel on either side, the fair and decreetal order, passed in E.A.No.39/2014 are set aside and the Civil Revision Petition stands

M. DURAISWAMY,J.,

sr

allowed. Since the plaintiff has no objection for allowing I.A.No.226 of 2016, I direct the District Munsif cum Judicial Magistrate Court, Sriperumbudur to allow the application in I.A.No.226 of 2016 and decide the suit in O.S.No.403 of 2008, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

08-06-2016

sr

Index:no
website:yes

To

The District Munsif cum Judicial Magistrate, Sriperumbudur.

C.R.P(NPD)No.1001 of 2016