

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2016

CORAM:

THE HON'BLE Ms. JUSTICE R.MALA

C.R.P.(NPD).Nos.3768, 3769 & 3770 of 2016

and

C.M.P.Nos.19164, 19165 & 19166 of 2016

C.R.P.(NPD).No.3768/2016

The District Collector
Salem

.. Petitioner/Petitioner/Judgment Debtor/
Defendant/Petitioner

Vs.

A.Chinnasamy
S/o.Arumugam

.. Respondent/Respondent/Decree holder/
Plaintiff/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 30.09.2016 passed in R.E.A.No.53/2016 in R.E.A.No.127/2014 in R.E.P.No.51/2008 in O.S.No.458/1993 on the file of the District Munsif Court, Attur.

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For Petitioner
in all CRP's : Mr.M.Venugopal, Spl.G.P.(c.s)

For Respondent
in all CRP's : Mr.M.Vijayakumar

COMMON ORDER

Heard the learned Special Government Pleader appearing for the petitioner and the learned counsel appearing for the respondent in all these Civil Revision Petitions.

2.The present Civil Revision Petitions have been filed challenging the impugned orders dated 30.09.2016 made in R.E.A.Nos.53, 54 and 55/2016 in R.E.A.No.127/2014 in R.E.P.No.51/2008 in O.S.No.458/1993 on the file of the District Munsif Court, Attur, wherein the applications filed by the petitioner to reopen, recall and condonation of delay came to be dismissed.

3.The respondent herein as plaintiff had filed the suit in O.S.No.458/1993 for declaration declaring the correct date of birth of the plaintiff as 24.05.1960 and directing the 4th defendant to change the date of birth of the plaintiff from 13.04.1958 to 24.05.1960 and directing the 5th defendant and 7th defendant to effect the above change in the S.S.L.C Book and Transfer certificate. The revision petitioner/4th defendant filed the written statement and contested the suit. The Trial Court, after hearing both sides had decreed the suit, against which the Government preferred an appeal in A.S.No.11/1998. The said appeal was also dismissed, against which a second

appeal was preferred with a petition to condone the delay, which was also dismissed.

4. Thereafter, the respondent herein has filed R.E.P.No.51/2008 to carry out the mandatory injunction and correct the date of birth. During the course of the proceedings in the said R.E.P.No.51/2008, the revision petitioner/4th defendant had come forward with the applications in R.E.A.Nos.53, 54 and 55/2016 to reopen, recall and for condonation of delay in filing the documents. The Executing Court after hearing both sides had dismissed all the three applications, against which the present Civil Revision Petitions have been preferred.

5. The learned Special Government Pleader appearing for the revision petitioner would submit that the decree passed by the Trial Court is not an executable decree. After the constitution of the Administrative Tribunal, the power to alter the date of birth vests with the Tribunal and the District Collector is not a competent person to carry out the same. Further, the letter addressed by the Principal Secretary/Commissioner of Revenue Administration dated 22.04.2016 was not considered by the executing Court. Furthermore, the delay has been properly explained. However, the Trial Court without considering the same had dismissed the applications and hence, the learned

Special Government Pleader appearing for the petitioner prayed for allowing the Civil Revision Petitions.

6.Resisting the same, the learned counsel appearing for the respondent would submit that when the respondent was working as Tahsildar, he filed the suit in O.S.No.458/1993 to correct his date of birth which has been wrongly mentioned in his school records by impleading all the defendants. After contest the suit was decreed, against which the Government preferred an appeal in A.S.No.11/1998 which was also dismissed. Against the said order of dismissal, the Government did not prefer any appeal. The learned counsel would further submit that the executing Court has no right to decide the validity of the decree passed by the Trial Court and the executing Court can only execute the order passed by the Trial Court. Hence, the executing Court has rightly considered the said factum and dismissed the applications preferred by the revision petitioner. Hence, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petitions.

7.Considered the rival submissions made by both sides and perused the typed set of papers.

8.The respondent herein as plaintiff has filed the suit in O.S.No.458/1993

for declaration declaring the correct date of birth of the plaintiff as 24.05.1960 and directing the 4th defendant to change the date of birth of the plaintiff from 13.04.1958 to 24.05.1960 and directing the 5th defendant and 7th defendant to effect the above change in the S.S.L.C Book and Transfer certificate. The revision petitioner/4th defendant filed the written statement, which was adopted by other defendants and contested the suit. The Trial Court, after considering the oral and documentary evidences had decreed the suit, against which the Government preferred an appeal in A.S.No.11/1998 and the said appeal was also dismissed. According to the learned Special Government Pleader appearing for the revision petitioner, the Government had preferred a second appeal with an application to condone the delay of 1797 days and the same was dismissed. While so, the respondent/plaintiff had filed an execution petition and during the course of the proceedings in the execution petition, the revision petitioner preferred the applications in R.E.A.Nos.53, 54 and 55/2016 to reopen, recall and for condonation of delay in filing the document. But it is a well settled proposition, that the executing Court has no power to testify the veracity of the decree passed by the Trial Court. Further, the Trial Court judgment and decree has also been confirmed by the first appellate Court. In such circumstances, the judgment and decree passed by the Trial Court has become final.

9.It is also pertinent to note, only after the judgment passed by the Trial Court, a letter has been addressed by the Principal Secretary/Commissioner of Revenue Administration dated 22.04.2016. However, the said official has no authority to do so and only to mark the said proceeding, the petitioner has filed the applications in R.E.A.Nos.53, 54 and 55/2016 to reopen, recall and for condonation of delay. Since the Execution Petition was filed in the year 2008 and the proceedings of the Principal Secretary/Commissioner of Revenue Administration, which is sought to be marked came into existence only on 22.04.2016, I am of the view that the revision petitioner has preferred the applications in R.E.A.Nos.53, 54 and 55/2016 only to prevent the respondent from enjoying the fruits of the decree. The said factum was rightly considered by the executing Court and the applications preferred by the revision petitioner was dismissed.

10.Hence, I do not find any infirmity or illegality in the orders passed by the executing Court and accordingly, these Civil Revision Petitions are dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed. No costs.

14.12.2016

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R.MALA, J.

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