

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.661 of 2016
and C.M.P.No.3393 of 2016

Ganapathy

... Petitioner

Vs.

1.Kamala

2.Balaji

3.Thennagi

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 29.01.2016 made in E.A.No.183 of 2011 in E.P.No.137 of 2006 in O.S.No.57 of 2004 on the file of the Principal Subordinate Judge, Puducherry.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.J.Zeakumar
for M/s.Achari and Antoni Associates

ORDER

Challenging the fair and final order passed in E.A.No.183 of 2011 in E.P.No.137 of 2006 in O.S.No.57 of 2004 on the file of the Principal Subordinate Judge, Puducherry, the Judgment Debtor has filed the above Civil Revision Petition.

2.The plaintiffs/respondents filed the suit in O.S.No.57 of 2004 for

declaration, permanent injunction and for recovery of possession. The defendant filed his counter and contested the suit. After contest, the trial Court decreed the suit. Aggrieved over the same, the defendant preferred an appeal in A.S.No.47 of 2007 on the file of the III Additional District Court, Puducherry and the Lower Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the appeal.

3.The learned counsel for the respondents submitted that as against the judgments and decrees passed by the Courts below, the defendant also filed a Second Appeal before this Court and the same was also dismissed at the admission stage itself.

4.Pursuant to the decree passed in O.S.No.57 of 2004, the respondents/Decree Holders filed an Execution Petition in E.P.No.137 of 2006. In the said Execution Petition, the Judgment Debtor filed an application in E.A.No.183 of 2011 under Section 47 of the Civil Procedure Code. In the Section 47 application, the Judgment Debtor mainly contended that the Power of Attorney of the plaintiff viz., Kamala is not the wife of G.Arumugam, who is the plaintiff and that she is the wife of one Srinivasan.

5.It is pertinent to note that the plaintiff viz., G.Arumugam and the defendant G.Ganapathy are brothers. The stand taken by the Judgment Debtor in Section 47 application has been taken by him for the first time before the Executing Court and the same was not raised either before the trial Court or before the Lower Appellate Court. The Power of Attorney of the plaintiff Kamala was also examined as P.W.1 before the trial Court. It is also pertinent to note that P.W.1 was cross examined by the defendant, however, no question was put to her with regard to her status. The defendant went to the extent of saying that his brother is not the husband of the said Kamala.

6.Before the Executing Court, the Judgment Debtor also filed an application in E.A.No.199 of 2011 to produce additional documents, which according to the learned counsel for the petitioner, was allowed by the Executing Court. The learned counsel appearing for the petitioner also produced the details of the voters, wherein it has been stated that Kamala is the wife of Srinivasan. However, in order to establish the said document, the defendant has not examined any witness before the Executing Court.

7. When the defendant had every opportunity to raise this issue before the trial Court as well as before the Lower Appellate Court, he chose not to raise the said issue before the Courts below. Only when the plaintiffs filed the Execution Petition, by way of Section 47 application, the defendant has raised this issue before the Executing Court. The Executing Court, taking into consideration all these aspects, rightly dismissed the application.

8. In these circumstances, I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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22.06.2016

To

The Principal Subordinate Judge,
Puducherry.

M.DURAIWAMY,J.
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