



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 18.07.2016

CORAM

WEB COPY THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) Nos.2535, 2536, 2537, 2538, 2539 of 2015

and

M.P (MD) No.1 of 2015

1.C.R.P (MD) No.2535 of 2015:-

1.P.Selvakumar
2.P.Ashok .. Petitioners/Petitioners/Third Parties
(Petitioners are rep.by their
Power holder, their father N.Paramasivam)

vs.

1.P.Saroja
2.Murugan @ Pauliah .. Respondents 1 and 2/Respondents 1 and 2 /
Plaintiffs 1 and 3
3.Antony @ Rajappa .. 3rd Respondent/3rd Respondent/1st Defendant

Prayer: Petition filed under Article 227 of the Constitution of India to direct the learned I-Additional Sub Judge, Nagercoil, to dispose of the Interlocutory Application in I.A.No.230 of 2014 in O.S.No.58 of 1995 within the time frame fixed by this Court.

2.C.R.P (MD) No.2536 of 2015:-

1.P.Selvakumar
2.P.Ashok .. Petitioners/Petitioners/Third Parties
(Petitioners are rep.by their
Power holder, their father N.Paramasivam)

vs.

1.P.Saroja
2.Murugan @ Pauliah .. Respondents 1 and 2/Respondents 1 and 2 /
Plaintiffs 1 and 3
3.Antony @ Rajappa .. 3rd Respondent/3rd Respondent/1st Defendant

Prayer: Petition filed under Article 227 of the Constitution of India to direct the learned I-Additional Sub Judge, Nagercoil, to dispose of the Execution Application in E.A.No.364 of 2014 in E.P.No.69 of 2012 in O.S.No.58 of 1995 within the time frame fixed by this Court.

**3.C.R.P(MD)No.2537 of 2015:-**

1.P.Selvakumar

2.P.Ashok

.. Petitioners/Petitioners/Third Parties

(Petitioners are rep.by their

Power holder, their father N.Paramasivam)

vs.

1.P.Saroja

2.Murugan @ Pauliah

.. Respondents 1 and 2/Respondents 1 and 2 /
Plaintiffs 1 and 33.Antony @ Rajappa .. 3rd Respondent/3rd Respondent/1st Defendant

Prayer: Petition filed under Article 227 of the Constitution of India to direct the learned I-Additional Sub Judge, Nagercoil, to dispose of the Interlocutory Application in I.A.No.140 of 2015 in O.S.No.58 of 1995 within the time frame fixed by this Court.

4.C.R.P(MD)No.2538 of 2015:-

1.P.Selvakumar

2.P.Ashok

.. Petitioners/Petitioners/Third Parties

(Petitioners are rep.by their

Power holder, their father N.Paramasivam)

vs.

1.P.Saroja

2.Murugan @ Pauliah

.. Respondents 1 and 2/Respondents 1 and 2 /
Plaintiffs 1 and 33.Antony @ Rajappa .. 3rd Respondent/3rd Respondent/1st Defendant

Prayer: Petition filed under Article 227 of the Constitution of India to direct the learned I-Additional Sub Judge, Nagercoil, to dispose of the Interlocutory Application in I.A.No.141 of 2015 in O.S.No.58 of 1995 within the time frame fixed by this Court.

5.C.R.P(MD)No.2539 of 2015:-

1.P.Selvakumar

2.P.Ashok

.. Petitioners/Petitioners/Third Parties

(Petitioners are rep.by their

Power holder,their father N.Paramasivam)

vs.

1.P.Saroja

2.Murugan @ Pauliah

.. Respondents 1 and 2/Respondents 1 and 2 /
Plaintiffs 1 and 33.Antony @ Rajappa .. 3rd Respondent/3rd Respondent/1st Defendant



Prayer: Petition filed under Article 227 of the Constitution of India to direct the learned I-Additional Sub Judge, Nagercoil, to dispose of the Interlocutory Application in I.A.No.142 of 2015 in O.S.No.58 of 1995 within the time frame fixed by this Court.

For Petitioners : Mr.Niranjan S.Kumar
(in all CRP's) for Mr.V.Balaji

For Respondents : No appearance
(in all CRP's)

COMMON ORDER

C.R.P(MD)No.2535 of 2015 arises out of the order passed by the I-Additional Sub Court, Nagercoil in I.A.No.230 of 2014 in O.S.No.58 of 1995.

2. C.R.P(MD)No.2536 of 2015 arises out of the order passed by the I-Additional Sub Court, Nagercoil in E.A.No.364 of 2014 in E.P.No.69 of 2012 in O.S.No.58 of 1995.

3. C.R.P(MD)No.2537 of 2015 arises out of the order passed by the I-Additional Sub Court, Nagercoil in I.A.No.140 of 2015 in O.S.No.58 of 1995.

4. C.R.P(MD)No.2538 of 2015 arises out of the order passed by the I-Additional Sub Court, Nagercoil in I.A.No.141 of 2015 in O.S.No.58 of 1995.

5. C.R.P(MD)No.2539 of 2015 arises out of the order passed by the I-Additional Sub Court, Nagercoil in I.A.No.142 of 2015 in O.S.No.58 of 1995.

6. Heard the learned counsel for the petitioners and perused the records. No representation for the respondents.

7. The learned counsel appearing for the petitioners would submit that the respondents 1 and 2 along with one Rajathi @ Rajammal instituted a suit in O.S.No.58 of 1995 before the I-Additional Sub Court, Nagercoil, against the third respondent and their father Palavesamuthu for declaration declaring that the sale deed executed by the second defendant in favour of the first defendant, dated 11.10.1979 as null and void and for recovery of possession.

8. The learned counsel for the petitioners would submit that originally the suit was filed in the year 1990 as *in forma pauperis* and after allowing the petition, the suit was numbered in the year 1995 as O.S.No.58 of 1995 and in the meanwhile, the first defendant sold the property in favour of the father of the revision petitioners namely Paramasivan through a registered sale deed, dated 18.08.1994. Subsequently, their father settled the property in favour of the petitioners by a settlement deed, dated 17.03.2004.



9. It is further submitted that the suit was being contested by the first defendant by filing a written statement stating that he had sold the plaint schedule properties to Paramasivam, so, the purchaser is a necessary party to the suit and suit is liable to be dismissed for non-joinder of necessary parties. The suit was decreed exparte on 21.01.2002, even though the second defendant passed away on 05.02.1998. Based on the decree, the plaintiffs filed an execution petition in E.P.No.69 of 2012 for recovery of possession and when the amin came for executing the warrant, the petitioners got knowledge of the ex-parte decree passed in the suit and subsequently filed the following Interlocutory applications:-

(i) I.A.No.230 of 2014 is filed to condone the delay of 332 days in filing the application to set aside the exparte decree;

(ii) I.A.No.140 of 2015 is filed to set aside the exparte decree;

(iii) I.A.No.141 of 2015 is filed for seeking leave of the Court to defend the suit;

(iv) I.A.No.142 of 2015 is filed to accept the power of attorney executed by the petitioners in favour of their father-Paramasivam;

(v) E.A.No.255 of 2013 is filed under Order 21, Rules 97 and 99 and Section 151 C.P.C., resisting execution of the decree; and

(vi) E.A.No.364 of 2014 is filed questioning the maintainability of the Execution Petition in E.P.No.69 of 2012 and to decide the maintainability as preliminary issue.

10. The learned counsel for the petitioners would further submit that when the applications filed in the suit were pending, the plaintiffs filed a revision in C.R.P(MD)No.2310 of 2015 seeking for a direction to dispose of E.A.No.255 of 2013 in E.P.No.69 of 2012 and taking advantage of the order passed in the revision, the respondents are pressurizing to pass order in the execution application.

11. The learned counsel would further submit that during the pendency of these revision petitions, the trial Court has allowed the applications in I.A.No.230 of 2014 and I.A.No.142 of 2015.

12. In view of the above facts, C.R.P(MD)Nos.2535 of 2016 and 2539 of 2016 have become infructuous and they are dismissed as infructuous.

13. The grievance of the petitioners is that the decree holder is attempting to dispossess them, when their petition to set aside the exparte decree and other applications as set out above are pending disposal. It is further alleged that the decree holder obtained direction in C.R.P(MD)No.2310 of 2015 behind their back and also suppressing the material facts.

14. Taking into consideration the prayer sought for in these revisions and the submissions of the learned counsel for the petitioners, this Court without going into the merits, directs the I-Additional Sub Court, Nagercoil, to dispose of the applications, before executing the decree, on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order.



15. With the above direction, C.R.P(MD)Nos.2536, 2537 and 2538 are disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/
Assistant Registrar(AS)

WEB COPY

/TRUE COPY/

Sub Assistant Registrar

To

The I-Additional Subordinate Judge,
Nagercoil, Kanyakumari District.

+1cc to M/S.V.Balaji, Advocate in SR.No.37396

C.R.P. (MD) Nos.2535, 2536, 2537, 2538, 2539 of 2015
and M.P (MD) No.1 of 2015
18.07.2016

ps

PA/SK-SKN/SAR I/29.07.2016/5P/3C