



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2016

WEB COPY

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2582 of 2015

and

M.P. (MD) .No.1 of 2015

K.Shanmugasundaram

.. Petitioner

Vs.

1.K.A.Arunachala Mudaliar

2.M.P.Paramasiva Mudaliar

3.T.S.Thirumalaiappan Mudaliar

4.S.K.Arumugam Perumal Mudaliar .. Respondents

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the impugned fair and decretal order dated 09.09.2015 and made in I.A.No.2510 of 2014 in O.S.No.132 of 2004 on the file of the learned Principal District Munsif, Tenkasi, to set aside the same and allow the Civil Revision Petition.

For Petitioner : Mr.S.Srinivasa Raghavan

For R1, R3 & R4 : Mr.D.Nallathambi

ORDER

This memorandum of Civil Revision Petition has been directed against the fair and decretal order dated 09.09.2015 and made in interlocutory application in I.A.No.2510 of 2014 in O.S.No.132 of 2004 on the file of the learned Principal District Munsif, Tenkasi.

2. The petitioner is the first defendant. The respondents filed a Suit in O.S.No.132 of 2004. The petitioner filed written statement and submitted that all the items mentioned in the schedule to the plaint are not available with him, when he was in management. During the pendency of the Suit, Writ Proceedings were initiated in W.P.No.2509 of 2007, dated 07.11.2007 and in W.A.No.2505 of 2010 dated 28.09.2011. In M.P.(MD).Nos.1 & 2 of 2012 in W.A.No.2505 of 2010, by the order dated 27.01.2012, this Court directed the petitioner to hand over the possession of certain properties, both movable and immovable properties shown in Annexure "A" & "B", except 7,8,9,11 and 12 of Annexure "B", to the petitioner in the said M.P.(MD).Nos.1 & 2 of 2012 in W.A.No.2505



of 2010. The petitioner further submitted that those properties are private properties and he is not in possession of the property. In compliance of the order of this Court, the petitioner handed over all the properties, which were in his possession. After handing over the other properties, the petitioner filed an interlocutory application in I.A.2510 of 2014, under Order 16 Rule 1 & 2 of the Code of Civil Procedure, for dismissal of the Suit in O.S.No.132 of 2004 as infructuous.

3. The first respondent filed his counter and resisted the same on the ground that all the schedule mentioned properties are not handed over by the petitioner and therefore trial has to be conducted to decide the issues raised by the respondents.

4. The learned Judge has considered all the facts and all the materials and documents and also the judgment of this Court in M.P.(MD).Nos.1 & 2 of 2012 in W.A.No.2505 of 2010 and dismissed the application holding that the Suit has to be tried with regard to the other properties, which are not covered in the judgment of this Court in M.P.(MD).Nos.1 & 2 of 2012 in W.A.No.2505 of 2010. Having been aggrieved by the said order the petitioner is before this Court with this Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the learned Judge failed to see that after judgment of this Court in M.P.(MD).Nos.1 & 2 of 2012 in W.A.No.2505 of 2010 and compliance of the said judgment by the petitioner, nothing survives in the Suit and the learned Judge erred in not dismissing the Suit. The learned Judge ought to have seen that the properties, which were in possession of the petitioner, at the time of Management were handed over to the respondents. The petitioner is not having any other property.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the first, third and fourth respondents and perused the materials available on record.

7. The respondents have filed the Suit in O.S.No.132 of 2004 for various relieves mentioned in the plaint. Pending Suit, writ proceedings were initiated and this Court in M.P.(MD).Nos.1 & 2 of 2012 in W.A.No.2505 of 2010 directed the third respondent therein to hand over the property in his possession to the respondents. On reading of the judgment of this Court in M.P.(MD).Nos.1 & 2 of 2012 in W.A.No.2505 of 2010, reveals that all the properties mentioned in the schedule, in the plaint are not covered by the said judgment. In the circumstances, the trial court has to decide the issue, as to whether the petitioner or the respondents are in possession of other properties mentioned in the schedule and whether they are liable to hand over the other properties to the respondent.



8. In the circumstances, the learned Judge has considered all these facts in proper perspective and dismissed the application by giving cogent and valid reasons and this court finds that there is no irregularity of the said order warranting interference of this Court. Hence, this Civil Revision Petition is liable to be dismissed.

9. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Principal District Munsif,
Tenkasi.

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.9286
+1cc to Mr.D.Nallathambi, Advocate Sr.No.9492
pjl
AA/AAL-MPA/07.04.2016/3p-4c

C.R.P (MD) No.2582 of 2015
and
M.P. (MD) .No.1 of 2015
17.02.2016