



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.01.2016

CORAM:
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.PD(MD)No.2600 of 2015
and M.P.(MD)No.1 of 2015

Killiyoor Town Panchayat
Rep.by the Executive Officer,
Killiyoor,
Thoaiyavattam Post,
Vilavancode Taluk,
Kanyakumari District.

... Petitioner

Vs.

1.R.Sudha
2.T.Wilson

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order and decretal order passed in E.P.No.64 of 2012 in O.S.No.204 of 2004 dated 10.10.2015 on the file of the Principal District Munisif Court, Kulithurai.

For Petitioner : Mr.V.Jeyaprakash
For Respondents : Mr.N.S.Ramakrishnadoss

ORDER

Challenge is made to the fair and decretal order dated 10.10.2015 and made in E.P.No.64 of 2012 in O.S.No.204 of 2004 on the file of the learned Principal District Munsif court, Kulithurai in this Civil Revision petition.

2.The revision petitioner herein is the 4th defendant in the suit in O.S.No.204 of 2004. The 1st respondent is the 3rd plaintiff, whereas, the 2nd respondent Mr.T.Wilson, Assistant Engineer, Tamil Nadu Electricity Board, Killiyoor at Tholayavattam, Kanyakumari District is the third party in the suit.

3.It is revealed from the records that originally one Rathinasamy had filed a suit in O.S.No.92 of 2001 as against (i) Tamil Nadu Government, represented by the District Collector, Kanyakumari District, (ii) Lalithabai, (iii) Killiyoor Town Panchayat, represented by the Commissioner and (iv) Killiyoor Town Panchayat, seeking the relief of declaration and permanent injunction in respect of the suit property. When the suit was taken up for trial, the defendants 1 to 3 were remained ex parte



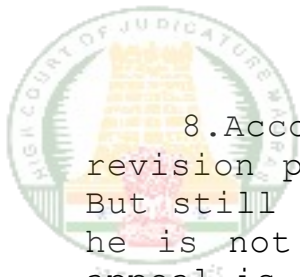
as they did not contest the suit. The 4th defendant alone had contested the suit. However, the trial Court had proceeded to pass a decree on 30.10.2010 granting the relief as prayed for by the plaintiff therein.

4. It is significant to note here that during the pendency of the suit, the plaintiff, Rathinasamy had passed away. Therefore, the plaintiffs 2 and 3 were impleaded as his legal heirs. On the strength of the decree, the 3rd plaintiff, who is the 1st respondent herein, had taken out an execution proceedings in E.P.No.64 of 2012.

5. It is pertinent to note that at the time of filing the execution proceedings, the 2nd plaintiff, Thangavadivu had also passed away. Therefore, the 3rd plaintiff alone had filed the execution proceedings to execute the decree. It is also revealed from the records that challenging the judgment and decree passed in the suit in O.S.No.204 of 2004 Revision had preferred an appeal in A.S.No.19 of 2011 on the file of the learned Subordinate Judge, Kulithurai. That appeal was dismissed confirming the judgment and decree of the Trial Court.

6. Mr.C.Godwin, learned counsel appearing for the revision petitioner / 4th defendant while advancing his argument has submitted that challenging the dismissal of the first appeal in A.S.No.19 of 2011, the revision petitioner had filed a second appeal in the year 2013. But still it is in S.R. stage as S.A.SR.No.32789 of 2013.

7. What it transpires from the records is that the revision petitioner being the 4th defendant had filed a counter statement before the executing court, wherein, a contention was projected on behalf of the revision petitioner saying that since the second appeal is filed and pending in S.A.SR.No.32789 of 2013, the decree passed in the suit need not attain finality. It was also contended that the plaint schedule property in R.S.No.198/3 is classified as Puramboke land, which absolutely and exclusively belong to the Government and it was also contended that in the year 2001, the revenue department by a proceedings of the Tahsildar, Vilavancode dated 06.08.2001 had surrendered the suit property to Killiyoor Panchayat Union i.e., to the revision petitioner / 4th defendant, for the purpose of construction of a Library and that the Killiyoor Panchayat Union had issued an order to Ilaignar Narpani Mandram, Thaalakkanvilai to construct a library in the suit property. It was also contended that the revision petitioner was in possession of the suit property. But this contention was rejected by the executing court and ultimately proceed to pass an order on 10.10.2015 ordering delivery of the suit property. Challenging this order, present Civil Revision is filed.



8. According to Mr.C.Godwin, learned counsel appearing for the revision petitioner, a second appeal was filed in the year 2013. But still it remains in SR. stage as S.A.SR.No.32789 of 2013. But he is not able to explain the fact properly as to why the said appeal is still pending in SR stage for the past 2 years.

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9. Secondly, the defendants 1 to 3 in the suit were remained ex parte and they never contested the suit. The 4th defendant, who is the revision petitioner alone has contested the suit and ultimately got defeated both before the Trial Court as well as the First Appellate Court. If at all any grievance is there, the revision petitioner could have very well persuaded his grievance in the second appeal, but, this Court is kept under dark as to why that second appeal is kept remaining in SR stage for the past 2 years.

10. Under these circumstances, this Court does not find any merit in the revision petition and therefore, the revision petition is liable to be dismissed as the impugned order does not warrant any interference of this Court.

11. Accordingly, this Civil Revision petition is dismissed and the order of Executing Court is confirmed. No order as to cost. Consequently, connected M.P. is closed.

Sd/

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

nbj

To

The Principal District Munsif court, Kulithurai.

+1 CC to Mr.N.S.Ramakrishnadass, Advocate in Sr.No.817

+1 CC to M/s.C.Godwin, Advocate in Sr.No.373

CN/JGB-DP/9.03.2016/3P-4C

C.R.P.PD (MD) No.2600 of 2015

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