



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2016

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (MD) .No.1145 of 2016 and
C.M.P.No.5675 of 2016

T.Ramalingam,
Hereditary Trustee,
Sri Bala Vinayakar Kovil,
F.F.Road, Chettiyooran
South Gate, Madurai.
Through his power agent
T.Umayan.

... Petitioner/Plaintiff

vs.

Raja Hussain

... Respondent/Defendant

PRAYER: This Civil Revision Petition filed under Section 115 of the Civil Procedure Code, as against the fair and executable order dated 05.04.2016 passed in E.A.No.9 of 2016 in E.P.No.12 of 2015 in O.S.No.55 of 2007 by the First Additional District Court, Madurai.

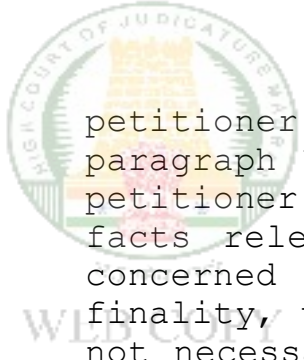
For Petitioner : Mr.J.Barathan for
Mr.T.R.Jeyapalam
For Respondent : Mr.N.Vallinayagam

O R D E R

The Civil Revision Petition is filed against the order dated 05th April 2016, passed in E.A.No.9 of 2016 in E.P.No.12 of 2015 in O.S.No.55 of 2007.

2.The Revision Petitioner has filed a suit in O.S.No.55 of 2007 before the first Additional District Court, Madurai for recovery of possession and future damages. The aforesaid suit was decreed on 04.12.2007. Thereafter, the petitioner has filed an execution petition in E.P.No.12 of 2015 to execute the decree granted by the trial court. The respondent herein filed a counter affidavit on 14.12.2015 by raising the new grounds in paragraph No.4 of the counter affidavit. Therefore, the petitioner has filed the present application in E.A.No.9 of 2016 to receive the reply statement.

3.Per contra, the learned counsel for the respondent would submit that the trial court has considered the case of the



petitioner as well as the respondent and it has been observed in paragraph No.5 of the order that 'considering the fact that the petitioner has already filed a detailed affidavit setting out the facts relevant to the E.P and the fact that this Court is not concerned with the merits of the suit which has already attained finality, this Court is of the opinion that the reply affidavit is not necessary'. Further, it is stated in the impugned order that the petitioner is not an aggrieved party in view of the order. However, the petitioner has now preferred this revision before this Court to set aside the said order, to remit back and to decide the matter on merits.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents. Perused the material documents carefully.

5. It is an admitted fact that the suit was decreed on 04.12.2007. Subsequently, an execution petition was filed by the petitioner in E.P.No. 12 of 2015 and the respondent has also filed a counter affidavit on 14.12.2015 before the trial court by raising the following grounds.

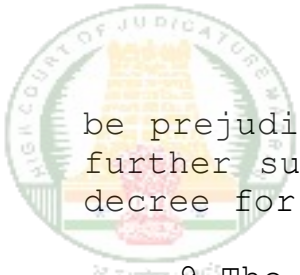
- i) The petitioner has no right over the E.P mentioned property
- ii) The suit property is a Government Property
- iii) The suit itself is barred by limitation and
- iv) the plaintiff is not a trust

Therefore, because of the averments raised by the respondent herein in the said counter affidavit, the revision petitioner has necessity to file an application in E.A.No.9 of 2016 to receive the reply affidavit for the counter statements filed by the respondent.

6. The trial court, by taking into consideration all the facts and circumstances of the case, dismissed the application by observing that the petitioner has already filed a detailed affidavit stating all the facts and therefore, the reply affidavit filed by the petitioner is not necessary to decide the Execution Petition.

7. Aggrieved over the same, the petitioner has filed the present Revision stating that in the reply affidavit filed by him, the petitioner has replied about the contention raised by the respondent/defendant and if the said reply has not been taken on file, the petitioner could not be able to let in evidence and the reasons stated in the order is not sustained and the same is liable to be set aside.

8. Further, the revision petitioner submitted that opportunity shall be given before the trial court to establish that the reply ~~statement~~ affidavit filed by him is necessary to decide the issue raised by the respondent in the counter affidavit, and unless the said issue has been decided by the trial court, the revision petitioner would



be prejudiced and there shall be multiplicity of proceedings. He further submitted that he was unable to enjoy the fruits of the decree for these years.

9. The respondent's counsel has no objection in allowing the revision, however, he seeks liberty to raise all the grounds and to file an application in the E.P proceedings.

10. Considering the submissions made by both the parties, the order, dated 05.04.2016, passed by the trial court in E.A.No.9 of 2016 in E.P.No.12 of 2015 in O.S.No.55 of 2007 is liable to be set aside. Accordingly, the same is set aside. In the facts and circumstances of the case, I am inclined to pass the following order:

i) The impugned order in E.A.No.9 of 2016 in E.P.No.12 of 2015 in O.S.No.55 of 2007 dated 05.04.2016, on the file of the First Additional District Munsif Court, is hereby set aside and the matter is remitted back to the Executing Court to decide the matter afresh, on merits, after providing opportunity to the parties concerned.

ii) The court below shall dispose E.A.No.9 of 2016 within a period of three months from the date of receipt of a copy of this order.

iii) Liberty is granted to the respondent to file application, if so advised in the Execution Proceedings.

iv) Accordingly, this Civil Revision Petition is allowed. Consequently, connected C.M.P.(MD).No.5675 of 2016 is also closed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The First Additional District Judge, Madurai.

+ 1 CC TO Mr.T.R.JEYAPALAM, ADVOCATE IN SR No. 55352

+ 1 CC TO Mr.N.VALLINAYAGAM, ADVOCATE IN SR No. 54571

VS

TE/MMS/SAR-IV : 10/05/2017 : 3P/4C

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