



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2016

CORAM

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) No.1581 of 2016

Sivasankar

.. Petitioner/Petitioner/
26th Respondent/Third Party

Vs.

Vendiyaal (Died)

1. Saraswathi
2. Thamarai Selvi
3. Kumaran
4. Senthilkumaran
5. Murugeswari

.. Respondents/Respondents/
Petitioners/Plaintiffs

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 20.04.2016 made in E.A.No.61 of 2015 in E.P.No.34 of 2009 in O.S.No.275 of 1996 on the file of the District Munsif Court, Virudhunagar and to allow the same.

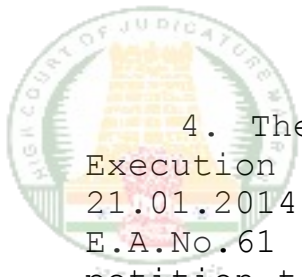
For Petitioner : Mr.M.Jegadeesan

ORDER

This Revision is directed against the order passed by the District Munsif Court, Virudhunagar, in E.A.No.61 of 2015 in E.P.No.34 of 2009 in O.S.No.275 of 1996, dated 20.04.2016.

2. Heard the learned counsel appearing for the petitioner and perused the records.

3. O.S.No.275 of 1996 was filed by one Vendiyaal(died) along with respondents 1 to 5 before the District Munsif Court, Virudhunagar, against one Ahamadu Iqupaul and 19 others for declaration, consequential injunction, in alternative for recovery of possession and for mandatory injunction to demolish the newly constructed building in the suit property. The suit came to be decreed on 18.11.1997. Based on the decree, the respondents levied an execution petition in E.P.No.34 of 2009.



4. The petitioner, who was arrayed as 26th respondent in the Execution petition, remained absent and he was set ex-parte on 21.01.2014. Subsequently, the petitioner filed an application in E.A.No.61 of 2015 to condone the delay of 634 days in filing a petition to set aside the ex-parte order.

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5. The learned counsel appearing for the petitioner would submit that the petitioner was suffering from paralytic attack and he was taking treatment at Madurai Meenakshi Mission Hospital, since 2014 and though, the documents were available, however, they were not produced before the Court and he is now ready to produce all the documents before the executing Court. An additional typed set is filed enclosing the medical reports.

6. It is seen that the application was dismissed mainly on his failure to prove the ailment. Therefore, this Court is of the opinion that the petitioner could be afforded one more opportunity to establish his case.

7. In such view of the matter, the order passed in E.A.No.61 of 2015 in E.P.No.34 of 2009 in O.S.No.275 of 1996, dated 20.04.2016 is set aside and the matter is remitted back to the District Munsif Court, Virudhunagar for fresh disposal.

8. The learned District Munsif, Virudhunagar shall dispose of the E.A.No.61 of 2015 in E.P.No.34 of 2009 in O.S.No.275 of 1996, on merits in accordance with law.

9. Accordingly, the Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The District Munsif,
Virudhunagar.

+1cc to M/s.M.Jegadeesan, Advocate SR.No.45303

C.R.P.(MD)No.1581 of 2016

17.08.2016

pmu

SD/GSV-PM/28.09.2016/2P/3C