



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.492 of 2016 (NPD)
and
C.M.P(MD)No.2130 of 2016

N.Soman

.. Petitioner/Petitioner/3rd Party Petitioner
Vs.

1.Vasanthai Bai
2.Tharmalingam

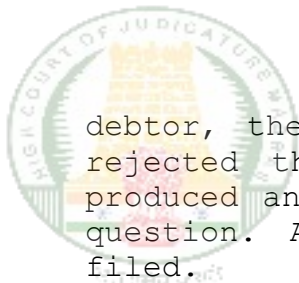
..Respondents/Respondents/Plaintiffs/Defendants

PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, to set aside the order dated 30.11.2015 made in un-numbered E.A.No. of 2015 C.F.No.8293/2 of 2015 in E.P.No.103 of 2008 in O.S.No.269 of 2004 on the file of the Principal District Munsif Court, Kuzhithurai by allowing this Civil Revision Petition.

For Petitioner : Mr.A.Sivaji

ORDER

The petitioner is 3rd party in O.S.No.269 of 2004 in E.P.No.103 of 2008. The first respondent filed suit for recovery of money against the second respondent, who is the brother of petitioner. The said suit was decreed on 06.07.2006. The first respondent filed Execution Petition in E.P.No.103 of 2008 to execute the decree passed on 06.07.2006 for attachment and sale of petition mentioned property. The second respondent remained ex-parte and execution petition was allowed and order of attachment was passed. In the circumstances, the petitioner has filed un-numbered E.A.No. Of 2015 in C.F.No.8293/2 of 2015 for setting aside the order of attachment and appointment of Advocate Commissioner on the ground that the suit property is in the name of his father. The petitioner is having 1/3 share in the property. The petitioner is in possession and enjoyment of the property by putting up construction. The petitioner has obtained electricity connection and he is residing there and paying the tax. In the circumstances, the petitioner has filed the petition in E.A.No. Of 2015 C.F.No.8293/2 of 2015 to raise the order of attachment. According to the petitioner, originally 38.750 cents belonged to his father Narayanan Nadar. While he was alive, he sold 5 cents to Karunakaran and Sornam. He was in possession and enjoyment of balance 33.750 cents till his death. After his death, the petitioner/judgment debtor and another brother inherited the property in equal share. The petitioner has inherited 11.250 cents in undivided share of 33.750 cents. He has put up a superstructure and residing there. Therefore, he has filed three applications for raising the attachment and appointment of Advocate Commissioner and for stay. All the three applications were posted before the Court without numbering the application. The decree holder objected for numbering the E.A., According to the first respondent, at the instance of second respondent/judgment



debtor, the petitioner has filed all the petitions. The learned Judge, rejected the applications on the ground that the petitioner has not produced any documents to show that he has any right in the property in question. Against that, the present Civil Revision Petition has been filed.

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2. The learned counsel for the petitioner submitted that the petitioner's father was owner of 38.780 cents. Out of which, he sold 5 cents during his life time and he was in possession and enjoyment of the property balance 33.780 cents. After his death, the petitioner/judgment debtor and his brother were inherited the property equally and the petitioner has constructed the house and residing there. The learned Judge erred in rejected the application at the threshold itself without numbering the same, on the ground that the petitioner has not produced any documents to substantiate his claim. The petitioner must be given an opportunity after numbering the E.A., to prove his case by allowing oral and documentary evidence if so desire.

3. I have heard Mr. A. Sivaji, learned counsel appearing for the petitioner and also carefully perused the entire materials on record.

4. Considering the materials on records and contention of the learned counsel for the petitioner, it is clear that the learned Judge has not exercised his power conferred on him and erred in rejecting the application without numbering the application. The petitioner must be given an opportunity to substantiate his claim.

5. In the result, the Civil Revision Petition is allowed. The learned Principal District Munsif, Kuzhithurai is directed to number the E.A., and hear the matter on merits and dispose the same in accordance with law. The Registry is directed to return the original un-numbered E.A.,

Sd/
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar.

To

The Principal District Munsif,
Kuzhithurai.

+1CC to M/S. Mr. A. Sivaji, Advocate, SR.No. 12200

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