



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2016

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.629 of 2016 (NPD)

and

C.M.P. (MD) .No.2852 of 2016

Shanmugasundaram @
Balashanmugam

... Petitioner/Petitioner/
Respondent/6th Defendant
Vs.

1.Sellammal (died)

2.Tmt.Vijayalakshmi

... Respondents/Respondents/Petitioner/
Plaintiff

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 11.02.2016 passed in E.A.No.275 of 2015 in E.P.No.64 of 2013 in O.S.No.169 of 1990 on the file of the Principal District Munsif Court, Karur.

For Petitioner :Mr.V.Balaji
For Respondents :Mr.Sureshkumar

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 11.02.2016 passed in E.A.No.275 of 2015 in E.P.No.64 of 2013 in O.S.No.169 of 1990 by the Principal District Munsif Court, Karur.

2.The petitioner is the sixth defendant in O.S.No.169 of 1990 and sixth respondent in the E.P. E.P was filed for taking possession of the property as per the final decree dated 20.09.2009 passed in O.S.No.169 of 1990. The respondent examined two witnesses. The petitioner took time for cross-examination of the witnesses. Subsequently, he did not cross-examine the witnesses. Therefore, ex-parte order was passed directing the petitioner to hand over the possession. The petitioner filed E.A.No.275 of 2015 to set aside the ex-parte order.

3.According to the petitioner, he was suffering from viral fever and therefore, he could not contest the E.P.

4.The respondent opposed the said application and filed counter affidavit stating that the reason given by the petitioner is not correct and only to prolong the matter and to prevent the respondent from enjoying the fruits of the decree, the petitioner filed this application.



5.The learned Judge considering all the facts and materials on record, dismissed the application. Against the said order of dismissal, the present civil revision petition is filed.

6.The learned counsel for the petitioner submitted that the learned Judge failed to consider the averments made in the counter affidavit in the execution petition and medical certificate produced by the petitioner. He further submitted that the learned Judge ought to have given an opportunity to contest the petition on merits. The learned Judge mechanically dismissed the application and set aside the ex-parte order for delivery, which was filed in time.

7.The learned counsel for the respondent/caveator submitted that the suit is of the year 1990 and decree passed on 20.09.2009 and E.P is filed for taking possession of the property, as per the final decree. Except the petitioner, other share holders are not opposing taking possession of the property by the respondent. He further submitted that the learned Judge has considered all the materials and dismissed the application by giving cogent and valid reasons. The revision petition is not maintainable against the order passed by the learned Principal District Munsif, Karur, since it is an appealable order.

8.The learned counsel for the respondent also submitted that as per the order of the learned Judge, possession was taken and delivery was also recorded and therefore, prayed for dismissal of civil revision petition.

9.I have heard Mr.V.Balaji, learned counsel appearing for the petitioner and Mr.Suresh Kumar, learned counsel appearing for the respondent and carefully perused the entire materials on record.

10.E.P filed by the respondent is for taking possession of the property, as per the final decree. In the E.P., ample opportunity was given to the petitioner to cross-examine the witness produced by the respondent. Only after granting number of adjournments, the learned Judge set the petitioner ex-parte and ex-parte order of delivery was passed. The learned Judge took note of the facts that the petitioner produced the medical certificate from the Doctor, who is his tenant. The suit is of the year 1990. The original plaintiff, died before enjoying the fruits of the decree and only legal heir of the plaintiff is conducting the case.

11.In the circumstances, the learned Judge considered all these facts and dismissed the application. There is no infirmity or illegality, warranting interference by this Court. From the contention of the learned counsel for the respondent that possession is taken and delivery was also recorded, civil revision petition is devoid of merits.

In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

/True copy/



To
The Principal District Munsif,
Karur.

+1cc to Mr.R.Suresh kumar, Advocate SR.No.16661

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