

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) No. 279 of 2014

Munikrishnappa

...Petitioner

Vs

1. Munisamy Achari
2. Bhadramma
3. Najundachari

...Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order in unnumbered R.E.P. /2013 in O.S.No.23 of 1986, on the file of the District Munsif Court, Hosur, dated 29.11.2013.

For Petitioner : Mr.V.Lakshminarayanan
For R2 and R3 : No appearance

ORDER

The suit filed by the petitioner for declaration and recovery of possession in O.S.No.23 of 1986, was decreed by the learned District Munsif, Hosur.

2. The decree dated 21 April 1994, was challenged in A.S.No.120 of 1994. The Appellate Court dismissed the appeal by judgment and

decree dated 9 September 1996. The petitioner appears to have filed an Execution Petition before the District Munsif, Hosur, on 27 November, 2000. The Executing Court directed the petitioner to amend the decree passed by the Appellate Court. The petitioner submitted application before the appellate Court and ultimately, got the decree amended. Thereafter, the petitioner filed an execution petition before the Executing Court. The learned Executive Judge returned the said application on the ground that execution petition was barred by limitation. The said order is under challenge in this Civil Revision Petition.

3. The learned counsel for the petitioner produced a copy of the Execution Petition filed on 27 November, 2000. The execution petition filed on 27 November, 2000 was well within the period of limitation.

4. The petitioner himself is the cause for the order passed by the learned Judge. The petitioner instead of re-presenting the Execution Petition filed on 27 November, 2000 after complying with the remarks filed a fresh Execution petition on 4 October, 2013. The learned Trial Judge was therefore correct in his observation that the execution petition was filed beyond the period of limitation.

5. The petitioner now produced the copy of the execution petition filed on 27 November, 2000. In case, the date of filing the execution petition on 27 November, 2000 is taken as the material date, it would be clear that the execution petition was filed within the period of limitation. The learned Executing Judge was not having the benefit of the execution petition filed on 27 November, 2000 for his perusal and that was the reason for returning the execution petition filed on 4 October, 2013. I am therefore of the view that the impugned order is liable to be set aside.

6. In the result, the impugned order dated 29 November 2013 is set aside. The petitioner is directed to produce the copy of the execution petition, dated 27 November, 2000 before the Trial Court to prove that the execution petition was filed in 2000 itself and the same was well within the period of limitation. The learned Trial Judge is directed to number the execution petition and dispose of the same on merits.

7. The Civil Revision Petition is allowed as indicated above. No costs.

27.04.2017

asi/svki

K.K.SASIDHARAN,J.

(svki)

To

District Munsif Court, Hosur.

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