

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.377 of 2017
and C.M.P.No.1656 of 2017

K.Duraisamy

.. Petitioner

Vs.

1.E.Kuppusamy
2.V.K.Lakshmi

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 08.12.2016 passed in E.A.No.147 of 2016 in E.A.No.18 of 2016 in E.P.No.23 of 2013 in O.S.No.743 of 2004 on the file of the I Additional District Munsif Court, Erode, whereby dismissing the petition for open the evidence adduced in E.A.No.147 of 2016.

For Petitioner : Mr.B.J.Ayyappan
For Respondents : Mr.M.Raja Gopalakrishnan
caveator

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 08.12.2016 passed in E.A.No.147 of 2016 in E.A.No.18

of 2016 in E.P.No.23 of 2013 in O.S.No.743 of 2004 on the file of the I Additional District Munsif Court, Erode, whereby dismissing the petition for open the evidence adduced in E.A.No.147 of 2016.

2.The first respondent as a plaintiff filed a suit in O.S.No.743 of 2004 for recovery of possession. The petitioner, who is the defendant, has filed the written statement and thereafter, issues were framed. Since the counsel for the defendant reported no instruction and the defendant was called absent, he was set exparte and exparte decree was passed on 07.10.2004. Then the plaintiff and his wife, who is settlee have filed E.P.No.23 of 2013 for delivery of possession. The defendant/judgment debtor has filed a counter. The petitioner/defendant has filed E.A.No.18 of 2016 under Section 47 of CPC stating that the decree and judgment passed in O.S.No.743 of 2004 is not in accordance with law and it is not acceptable under Section 2(9) of C.P.C. Both sides evidence was over and when the matter was posted for judgment, the petitioner/defendant has filed E.A.No.147 of 2016 for reopen the petitioner's side evidence to mark some documents. The said application was dismissed, against which, the present revision is preferred by the petitioner/defendant.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.The plaintiff is none other than the father of the defendant. The first respondent/plaintiff has filed the suit for recovery of possession. His son/revision petitioner herein has filed the written statement and issues were framed. Since the counsel on record for the defendant reported no instruction and the defendant called absent, he was set exparte and exparte decree was passed on 07.10.2004. Thereafter, the first respondent executed the settlement deed in favour of his wife/second respondent and they have filed E.P.No.23 of 2013 for delivery. Admittedly, the petitioner/defendant has not filed any application to set aside the exparte decree. He has filed E.A.No.18 of 2016 under Section 47 of C.P.C. stating that the decree and judgment is not in accordance with law and that it is non executable. After that, enquiry has been conducted and order has been reserved. Then only, the petitioner/defendant has come forward with the application in E.A.No.147 of 2016 for reopen the petitioner's side evidence stating that now only he came to know that some more documents and

evidence are available to putforth his case. The Executing Court after considering the counter filed by the respondents, dismissed the application.

5. On perusal of typed set of papers, it reveals that the suit is filed in the year 1998, written statement was filed on 29.07.1999 and issues were framed on 07.01.2000. At the time of trial, counsel on record for the petitioner/defendant reported no instruction, the petitioner was called absent and that he was set exparte and exparte decree was passed on 07.10.2004. Execution Petition was filed in the year 2013, the petitioner/judgment debtor has filed the counter on 19.11.2013. Even though in his counter, he has stated that he filed the application to condone the delay of 3213 days in filing the application to set aside the exparte decree, he is not in a position to state as of now what is the fate of the application under Section 5 of the Limitation Act. Furthermore, execution Petition has been pending from 2013 onwards. The petitioner has filed E.A.No.18 of 2016 only on 04.02.2016. The respondents filed counter. Both sides evidence was over and it was posted for judgment. But in that application, the petitioner has not stated anything about the documents and the evidence available with him.

6.Considering the aforestated circumstances of the case, I am of the view that the petitioner/defendant with malafide intention to drag the 77 years old plaintiff, who is none other than his father and to prevent him to enjoy the fruits of the decree, has filed series of applications. In such circumstances, I am of the view that the Executing Court considered all the aspects in proper perspective and rightly dismissed the application. So the fair and decreetal order passed by the Executing Court does not warrant any interference and it is hereby confirmed. Consequently, the revision stands dismissed in the admission stage itself.

7.In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.02.2017

kj

Index:Yes/No

To

I Additional District Munsif Court, Erode.

R.MALA,J.

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