

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

C.R.P.(N.P.D.) No.431 of 2017

K. Dayalan

..Petitioner

Vs.

Arulmighu Karaneewarar Temple
now represented by the
Executive Officer

..Respondent

Prayer: The Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal order dated 23.12.2016 made in E.A.No.3657 of 2016 in E.A. No.6004 of 2014 in E.P.No.3959 of 2011 in O.S. No.11634 of 1989 on the file of IX Assistant, City Civil Court, Madras.

For Petitioner : Mr.M.S. Subramanian

For Respondents: Mr. T. Jayaramaraj
Government Advocate (CS)

ORDER

The respondent herein has filed a suit in O.S. No.11634 of 1989 before the IX Assistant Judge, City Civil Court, Chennai for eviction of the petitioner herein from the suit schedule property. The trial Court has decreed the suit. The revision petitioner/Judgment debtor has filed an appeal in A.S No.195 of 1998 before the first appellate Court and the same was dismissed. Challenging the same, the revision petitioner has filed an appeal in S.A. No.1135 of 2002 before this Court.

2 Pursuant to the decree, the respondent/Decree holder has filed E.P. No.3959 of 2011 for execution of the decree and the revision petitioner was set exparte on 26.06.2013 and exparte delivery also ordered. Subsequently, the revision petitioner/judgment debtor filed E.A. No.6004 of 2014 under Section 47 of Civil Procedure Code with a prayer that the decree holder cannot proceed against the petitioner in respect of property situate at door No.5 and another application in E.A.No.3657 of 2016 to recall P.W.1 in E.A.No.6004 of 2014 for the purpose of marking additional documents wherein E.P. Court has held that after completion of P.W.1 evidence on 20.04.2016, the petitioner has filed the present application and dismissed the same

stating that there is no explanation on the side of the petitioner/Judgment debtor what way the above said documents are helpful to the petitioner/Judgment debtor to prove his case. Challenging the said order, the revision petitioner has filed the present Civil revision petition before this Court.

3. According to the learned counsel for the petitioner, the respondent has filed a suit and decree was granted by the trial Court and the same was attained finality before this Court in S.A.No.1135 of 2002, wherein this Court has held as under:

"I do not find any scope to interfere with the concurrent findings of both the Courts below, except stating that the said decree will not in any way affect the possession of the appellant in respect of door NO.5 with reference to which, admittedly, even the respondent do not claim any right over the said property. The Second appeal is therefore dismissed. No costs. Consequently, C.M.P. is closed."

4 Now, the revision petitioner/judgment debtor has filed an application E.A. No. 3657 of 2016 to recall P.W.1 for the purpose of marking additional documents and to let in evidence to establish that the revision petitioner has been in possession of the property situate

other than Door.No.6. Therefore, the petitioner wants to recall P.W.1 and mark the certified copies of documents filed along with the application and therefore, no prejudice would be caused to the respondent/ Decree holder if the said application is allowed.

5. Per contra, the learned counsel for the respondent would submit that the petitioner has filed the present application for marking of the documents after completion of P.W.1 evidence. Therefore, the the Court below has rightly dismissed the said application and there is no warrant to interfere with the order passed by the Court below.

6 Heard the learned counsel for the petitioner, learned counsel for the respondent and perused the materials on records.

7 It is seen from the fact that the instant application has been filed by the revision petitioner to recall P.W.1 for marking additional documents. The respondent has not claimed other than the suit property. The instant application has been filed by the revision petitioner to receive the additional documents to establish that the revision petitioner have been possession of the property other than the door No.6. The certified copies of the those documents are already

marked in the suit. Therefore, no prejudice would be caused to the respondent/Decree holder. Therefore, these documents are necessary to prove the case of the revision petitioner. Further, petitioner also filed an application in E.A.SR.No.40099 of 2016 to receive the additional documents and mark the same on the petitioner's side evidence in E.A.No.6004 of 2014 in E.P.No.3959 of 2011. Counsel for the petitioner also undertakes before this Court that no further evidence will be adduced on the side of the revision petitioner. Therefore, an opportunity shall be granted to the revision petitioner/judgment debtor to recall P.W.1 and to mark the certified copies of documents filed along with the instant application.

8 In view of the above, the Civil Revision Petition stands allowed. The order passed by the Court below in E.A.No.3657 of 2016 in E.A. No.6004 of 2014 in E.P.No.3959 of 2011 in O.S. No.11634 of 1989 is set aside. The Court below is directed to number the Un-numbered E.A. S.R.No.4099 of 2017 filed by the revision petitioner to receive the additional documents and dispose of the said application within a period of two weeks from the date of receipt of copy of this order. As the decree has been passed in the year 1998, the Execution Court is directed to dispose of the E.P.No.3959 of 2011 as expeditiously as possible.

D.KRISHNAKUMAR.J,

lbm/vaan

The Civil revision petition stands allowed with the above directions. No costs.

27.11.2017

Speaking/Non-speaking order

Index: Yes/No

Internet: Yes/No

lbm/vaan

Note: The registry is directed to return original records immediately to the concerned Court below.

Note: Issue order copy on 05.12.2017

C.R.P.(N.P.D.) NO.431 of 2017

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