



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.12.2017
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

CMA (MD) No.1246 of 2016

K.Lakshmiraj

... Appellants

Vs.

His Holiness Sri Satyathma Theertha
Madathipathi, Urraradi Mutt,
Pooja Mandir, 5th Cross Sankarapuram,
Basavangudi, Bangalore,
Karnataka State represented through its
Power of Attorney,
G.Raghottammacharya,
S/o.late G.V.Gopalcharya

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (t) of Civil Procedure Code, to set aside the fair and decreetal order dated 15.02.2016 made in I.A.No.5 of 2015 in A.S.No.156 of 2012 on the file of the Additional Sub Court, Tirunelveli and to restore the main appeal in A.S.No.156 of 2012.

For Appellant

: Mr.S.P.Maharajan

For Respondents

: Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

JUDGMENT

The respondent Mutt is the owner of the suit property. The appellant's family has been in possession and enjoyment of the suit property in the capacity of tenant for several decades. The appellant accepts the status of tenant attributed to him. Since the property in question belongs to a religious institution, the respondent had to file a civil suit for recovery of possession. O.S.No.648 of 2009 filed before III Additional District Munsif, Tirunelveli was decreed in favour of the respondent on 21.02.2012. The appellant herein as the aggrieved defendant filed A.S.No.156 of 2012 before the Additional Sub Court, Tirunelveli. When the first appeal was taken up for disposal on 11.06.2014, the appellant herein was not present. The appeal was therefore dismissed for non prosecution. In order to restore the first appeal, the appellant herein filed I.A.No.5 of 2015. The said I.A. was dismissed and questioning the same, this Civil Miscellaneous Appeal has been filed by the appellant/defendant.



2.The learned counsel appearing for the respondent Mutt submitted that the decree passed in their favour has since been executed. Possession was taken on 23.12.2014. E.P.93 of 2012 was itself terminated on 20.01.2015. According to him, nothing survives for adjudication in this civil miscellaneous appeal.

3.This Court is of the view that this appeal cannot be dismissed as infructuous. At the same time, this Court cannot lose sight of the fact that the appellant herein had been attempting to drag on the proceedings. It is submitted by the appellant that the appellant has been living in the suit property and that he has been deprived of his livelihood.

4.Considering the circumstances obtaining in this case, this Court would direct the respondent to pay a sum of Rs.75,000/- to the appellant on or before 31.03.2018. The first appeal is always a continuation of the original proceedings and therefore, the appellant herein is very much entitled to prosecute the first appeal. It is seen that the appeal was dismissed only for non prosecution and the appellant herein does have a case for restoration of his first appeal. But, on merits, the appellant herein really has no defence. Even if the first appeal is restored, it would only have to be formally prosecuted. Inasmuch as the litigative journey has been short-circuited, in the interest of justice, this Court has chosen to pass the aforesaid direction. Such a direction is given to the respondent more considering the pitiable circumstances in which the appellant is placed. That is why taking note of his right to prosecute the first appeal, even while dismissing the civil miscellaneous appeal, the aforesaid direction to the respondent to pay a sum of Rs.75,000/- to the appellant has been passed.

5.With this direction, this civil miscellaneous appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1.The Additional Sub Court, Tirunelveli.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.S.P.MAHARAJAN,Advocate,SR.92913

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