



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.01.2017

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.R.P (MD) No.73 of 2017 (NPD)

and

C.M.P (MD) No.275 of 2017

Mariammal .. Revision Petitioner/ Respondent/
Respondent/ Defendant

Vs.

K.Arunachalam .. Respondent/ Petitioner/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order Passed dated 05.07.2010 in E.A.No. 79 of 2015 in E.P.No.53 of 2011 in O.S.No.320 of 2007 on the file of the District Munsif, Uthamapalayam and allow the Civil Revision Petition.

For Petitioner : Mr. S.Kadarkarai
For Respondent : Mr. R.Subramanian
for Caveator

ORDER

The Civil Revision Petition is filed to aside the Fair and Decreetal Order Passed in E.A.No. 79 of 2015 in E.P.No.53 of 2011 in O.S.No.320 of 2007 on the file of the District Munsif, Uthamapalayam.

2. The petitioner is the defendnat in O.S.No.320 of 2007 and respondent in E.P.No.53 of 2011. The respondent is the plaintiff in Suit in O.S.No.320 of 2007 on the file of the District Munsif, Uthamapalayam. The respondent filed suit for permanent injunction and the said suit was partly decreed. Thereafter, she filed E.P.No.53 of 2011 to execute the decree passed in O.S.No.320 of 2007. The respondent filed E.A.No.79 of 2015 to amend the Execution Petition by correcting the date of decree as 28.6.2011 instead of 28.06.2010 and further in Column D, appeal is pending instead of no appeal is pending and "EFGH" instead of "BFGH" in Column No.J. According to the respondent, these mistakes had crept in by inadvertence due to typographical error.

3. The petitioner filed counter and opposed the said amendment on the ground that the respondent deliberately did not furnish the pendency of the first appeal and furnished the date of decree wrongly and wrong particulars.

4. The learned Judge considered the materials on record allowed the E.A.No.79 of 2015 on condition that the respondent has to pay Rs.1,500/- to the petitioner on or before 11.07.2016.

5. Against that order, present Civil Revision Petition has been filed.

6. The learned counsel appearing for the petitioner submitted that the learned Judge did not appreciate the facts and erred in allowing the application to amend the Execution Petition. The order of allowing an application is contrary to the finding of the learned Judge that the petitioner has not given valid reason for amendment by ordering amendment. The learned Judge caused injustice to the petitioner which amounts to miscarriage of justice.

7. The learned counsel appearing for the Caveator submitted that by inadvertence the respondent has furnished wrong particulars. Now, as per the order of the learned Judge amendment has been carried out. He further submitted, that the petitioner refused to receive the cost and therefore, the said amount has been deposited in to the Court.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. The respondent filed an Execution Petition to execute the decree dated 28.06.2010. According to the respondent, some mistakes crept in, in the particulars furnished by him in Execution Petition and sought for amendment. The learned Judge considering the averments made in the petition as well as objection of petitioner allowed the application on condition that the respondent pay a sum of Rs.1,500/- as cost to the petitioner. Even though, the learned Judge has held that the respondent has not given sufficient reason for amendment has compensated the petitioner, directing the respondent to pay a sum of Rs.1,500/- as cost. Taking into consideration of the fact that the decree is dated 28.06.2010 and there is no bar for the respondent to file fresh Execution Petition, even if he withdraws present Execution Petition, I hold that there is no illegality or irregularity in allowing the application warranting interference by this Court

10. In the result, the Civil Revision Petition is devoid of merits and hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(C)

/TRUE COPY/

Sub Assistant Registrar

To
The District Munsif, Uthamapalayam

+1 cc to Mr.R.Subramanian, Advocate, SR.No:2698

+1 cc to Mr.Kadarkarai, Advocate, SR.No:2426

trp

<https://hcmr.judges.gov.in/cases> 10.02.2017/2p/4c

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