



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.1110 of 2016

and

C.M.P(MD)No.5590 of 2016

1.Perumal
2.G.Venkatesan
3.G.Durai Pandiyan
4.P.K.Mahendran ... Petitioners/Respondents/Defendants/
Respondents 7 to 10 in A.S.No.31 of 2000

Vs.

Hari Govindaiyer Dharma Trust Chidambaram,
Rep. By Managing Trustee,
R.K.Kamalakaran ... Respondent/Petitioner/Plaintiff
1st Respondent in A.S.No.31 of 2000

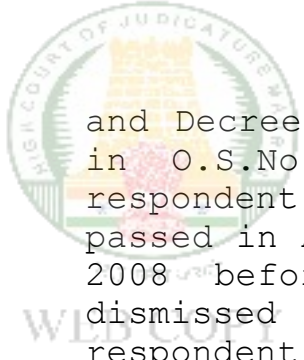
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to struck off E.P.No.61 of 2016 in A.S.No.31 of 2000 on the file of the I-Additional Sub Court, Madurai.

For Petitioners : Mr.M.S.Suresh Kumar
For Respondent : Mr.G.Gomathi Sankar

ORDER

The petitioner has filed the above Civil Revision Petition to struck off the petition in E.P.No.61 of 2016 in A.S.No.31 of 2000 on the file of the I-Additional Sub Court, Madurai.

2.The petitioners are the respondents in E.P.No.61 of 2016 and respondents 7 to 10 in A.S.No.31 of 2000 and the respondent is the petitioner in E.P.No.61 of 2016 and the first respondent in A.S.No.31 of 2000. The respondent filed a suit in O.S.No.610 of 1987 on the file of the learned I-Additional Sub Judge, Madurai, for declaration and possession. The said suit was decreed on 08.03.1999. Against the said Judgment and Decree, the petitioners' vendors filed first appeal before this Court in A.S.No.31 of 2000. Subsequently, the petitioners, who are the purchasers, were impleaded themselves as appellants in A.S.No.31 of 2000. By an order, dated 14.12.2005, the Division Bench of this Court granted interim order in C.M.P(MD)No.6013 of 2005. This Court allowed A.S.No.31 of 2000, dated 02.01.2008, by setting aside the Judgment

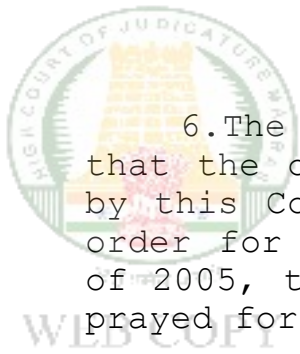


and Decree of the learned I-Additional Sub Judge, Madurai, passed in O.S.No.610 of 1987 holding that the suit filed by the respondent is vexatious suit. Against the Judgment and Decree passed in A.S.No.31 of 2000, the respondent filed S.L.P.No.8559 of 2008 before the Honourable Apex Court. The said S.L.P was dismissed by an order, dated 05.05.2008. Subsequently, the respondent filed review application in Rev.Applc.No.30 of 2012 before this Court. The said review was also dismissed on 20.06.2012.

3.In the meantime, the respondent also filed an execution petition in E.P.No.61 of 2016 to execute the order, dated 14.12.2005 made in C.M.P.No.6013 of 2015 in A.S.No.31 of 2000. The petitioners filed the present Civil Revision Petition to strike off E.P.No.61 of 2016 on the ground that the order, dated 14.12.2005 passed in C.M.P.No.6013 of 2005 is merged with the Judgment passed by this Court in A.S.No.31 of 2000, allowing the said appeal. In view of the said Judgment, dismissal of S.L.P and review application filed by the respondent, the respondent is not entitled to execute the interim order passed in C.M.P.No.6013 of 2005. The respondent has suppressed the Judgment of this Court in A.S.No.31 of 2000, the Judgment of the Apex Court in S.L.P and the order passed in the review application and filed Execution Petition.

4.The learned counsel appearing for the petitioners further submitted that for the very same relief, the respondent also filed O.S.No.131 of 2014 on the file of the learned IV-Additional District and Sessions Judge, Madurai. The petitioners filed an application in I.A.No.965 of 2015 to reject the plaint filed in O.S.No.131 of 2014. The said application was allowed on 26.10.2016 and rejected the plaint filed by the respondent with cost of Rs.50,000/-.

5.The learned counsel for the petitioner relied on the Judgment of the Honourable Apex Court in ***M.Nagabhushana Vs. State of Karnataka and others*** reported in (2011) 3 SCC 408 and submitted that the appellant re-agitating his case already decided by the Honourable Supreme Court and this Court. The filing of Execution Petition is nothing but abuse of process of Court and the respondent has not approached the Executing Court with clean hands as he suppressed that the present Execution Petition filed by the respondent is not maintainable as he has already lost before this Court and the Honourable Apex Court. In view of the Judgment of this Court in A.S.No.31 of 2000, dismissal of S.L.P.No.8559 of 2008 by the Honourable Apex Court and dismissal of the Review Application No.30 of 2012 by this Court, prayed for dismissal of the Execution Petition with exemplary costs.



6.The learned counsel appearing for the respondent submitted that the order passed in C.M.P.No.6013 of 2005 was not set aside by this Court while allowing A.S.No.31 of 2000. When there is no order for setting aside the order of this Court in C.M.P.No.6013 of 2005, the respondent is entitled to execute the said order and prayed for dismissal of the Civil Revision Petition.

7.Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

8.The respondent is seeking to execute the order passed by this Court, dated 14.12.2005 made in C.M.P(MD)No.6013 of 2005 in A.S.No.31 of 2000. Subsequently, A.S.No.31 of 2000 itself was allowed setting aside the Judgment and Decree passed in O.S.No.610 of 1987. S.L.P and review application filed by the respondent were also dismissed. The another suit in O.S.No.131 of 2014 filed by the respondent for the very same relief was rejected with cost of Rs.50,000/-. In view of the Judgment and Decree passed in the first Appeal, the order of the Honourable Apex Court in S.L.P and the order of this Court in review application, the contention of the learned counsel for the respondent that the Execution Petition filed by the respondent is maintainable and the respondent is entitled to execute the order, dated 14.12.2005 in C.M.P(MD) No.6013 of 2005 is untenable and unsustainable. On the other hand, the contention of the learned counsel for the petitioners is that in view of the Judgment passed in A.S.No.31 of 2000, order of the Honourable Apex Court in S.L.P.No.8559 of 2008 and the dismissal of the review application filed by the respondent in Rev.Aplc.No.30 of 2012, E.P.No.61 of 2016 is not maintainable has considerable force and acceptable.

9.Taking note of all the facts and circumstances of the case, E.P.No.61 of 2016 in A.S.No.31 of 2000 on the file of the learned I-Additional Sub Judge, Madurai, is struck off and the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

The I-Additional Sub Judge, Madurai.

+1 cc to M/s.M.S.Suresh Kumar, Advocate in SR.No.6033

CSL/SKN/SAR-III/06.02.2017 :3P/3C

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