



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.11.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (MD) .No.1763 of 2016 (PD)

WEB COPY

1.P.Choladevi
2.P.Solaimanikandan
3.P.Bhagavathi ... Petitioner/Petitioner/3rd party/3rd party

Vs.

1.N.Puyalvannan ... Respondent/Respondent/Petitioner/Plaintiff
2.S.Palaniappan (Died) ... Respondent

Prayer: Petition is filed under Article 227 of the Constitution of India to direct the learned Additional District Munsif, Dindigul to number the application was filed by the petitioner under Order XXXVIII Rule 9 read with Section 151 of C.P.C. in I.A.No. Unnumbered of 2016 in I.A.No.445 of 1999 in O.S.No.195 of 2004 and to dispose the application on merits within the time fixed by this Court.

For Petitioner : Mr.R.Pandia Maharaja
For Respondent : No appearance

ORDER

The civil revision petition is filed to direct the learned Additional District Munsif, Dindigul to number the application which was filed by the petitioners under Order XXXVIII Rules 9 read with Section 151 of C.P.C. in I.A.No. Unnumbered of 2016 in I.A.No.445 of 1999 in O.S.No.195 of 2004 and to dispose the application on merits within the time fixed by this Court.

2. According to the learned counsel for the petitioners, the petitioners have filed an application under Order 38 Rule 9 read with Section 151 of C.P.C., to raise the attachment made in I.A.No.445 of 1999. However, the Trial Court has simply returned the application with following queries:-

"1. Certified copy of petition and order in I.A.No.445/1999 to be produced.

2. Description of property not found with EC.

3. Description of property mentioned in this petition is differ with attachment warrant.

4. Suit was decreed in favour of Plaintiff.
Hence maintainability of this petition under Order 38 Rule 9 C.P.C. to be explained. Hence returned



3. Even though the petitioners have re-presented the same after rectifying the defects, the same was again returned. Aggrieved against the said return, the present revision has been filed.

4. Though notice was served on the first respondent and his name also printed in the cause list, none appeared on behalf of him. It is stated that the second respondent died. But, no steps have been taken so far to implead his Legal Representatives.

5. The revision petitioners have filed an interlocutory application under Order 38 Rule 9 read with Section 151 of C.P.C. in I.A.No.445 of 1999 in O.S.No.195 of 2004. The Additional District Munsif, Dindigul has returned the said application with certain defects on 12.07.2016. The petitioners after rectifying the defects, re-presented the application on 13.07.2016. However, the learned Additional District Munsif, Dindigul, again returned the same on 06.08.2016 stating that the previous return Nos.2 and 4 holds good.

6. The learned Additional District Munsif, Dindigul has raised the maintainability of the said application and also to explain as to how the said application is maintainable under Order 38 Rule 9 of C.P.C.

7. Considering the facts and circumstances of the case and also perusal of the records, this Court is inclined to pass the following orders:-

(i) The petitioners are directed to re-submit the application after complying the defect No.2 pointed by the learned Additional District Munsif.

(ii) On such representation of the application by the petitioner, the learned Additional District Munsif, Dindigul, is directed to number the said application, if it is otherwise in order, subject to the raising of question regarding maintainability after numbering.

8. The civil revision petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif, Dindigul.

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