



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2630 of 2016

WEB COPY

V.Balasubramaniyan,
The power of attorney holder of
B.Srinivasan @ Harish ... Petitioner/Petitioner/Defendant

Vs.

R.Duraipandian ... Respondent/ Proposed buyer

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order, dated 21.11.2016 in unnumbered I.A.S.R.No.31400 of 2016 in O.S.No.34 of 1917 on the file of the Principal Sub Court, Madurai.

For Petitioner : Mr. N.Ananthapadmanabhan

ORDER

The petitioner has filed the above Civil Revision Petition against the order, dated 21.11.2016 made in unnumbered I.A.S.R.No.31400 of 2016 in O.S.No.34 of 1917 by the Principal Sub Court, Madurai.

2.The petitioner has filed an application in I.A.S.R.No.31400 of 2016 in O.S.No.34 of 1917, dated 21.11.2016 on the file of the Principal Sub Court, Madurai. The learned Judge rejected the application as not maintainable on the ground that no scheme decree was passed in respect of the petition mentioned property.

3.The submissions made by the learned counsel appearing for the petitioner are as follows:-

(i) Sholavandan Malayaam Krishnaiyer Charity came into existence by the Will, dated 16.08.1881, executed by one Krishana Iyer. O.S.No.34 of 1917 was filed for framing a scheme decree to manage the Trust. A scheme decree was framed on 11.10.1917. Subsequently, by an order dated 22.03.1999 made in O.S.No.876 of 1999 and by an order, dated 20.02.2005 made in I.A.No.750 of 2004 in O.S.No.34 of 1917, the scheme decree was modified and the amended decree came into effect on 28.04.2006.

(ii) The Trustee is entitled to sell the property belonging to the Trust if it is problematic or not yielding any income to carry out the charities or in the interest of Trust, the Trustee can deal with the same with prior permission of the Court. The petition



mentioned property is in possession of the tenants. They are not paying any rent. The property is 150 years old and it is in a dilapidated condition and it will be in the interest of Trust, if the property is sold and the sale consideration is deposited in the Fixed Deposit. The interest from the Fixed Deposit will be more sufficient to carry out the charities. Even if the property is renovated or demolished and reconstructed, the Trust will not get rental income equal to the interest it may get by selling and depositing the sale consideration in Fixed Deposit.

(iii) The learned Judge failed to see that the petition property belongs to Trust as per Will, dated 16.08.1881 executed by Krishna Iyer, who formed the Trust. Even if the petition property is not mentioned in the scheme decree, the Trust property can be sold only after obtaining order from the competent Court. The learned Judge ought to have numbered the I.A and ought to have given an opportunity to the petitioner to prove that the petition mentioned property belongs to the Trust and it will be in the interest of the Trust to sell the property.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. I.A.S.R.No.31400 of 2016 was rejected by the learned Judge on the ground that the petition mentioned property is not covered by scheme decree. The learned Judge failed to consider the averments of the petitioner that the petition mentioned property was mentioned in the Will, dated 16.08.1881 by which the Trust was created. If it is proved that the petition mentioned property belongs to the Trust, it can be sold only after obtaining order from the competent Court even though the property is not covered by scheme decree. In view of the contention of the learned counsel for the petitioner that the petition mentioned property belongs to the Trust as per the Will, dated 16.08.1881, the order of the learned Principal Sub Judge, Madurai, dated 21.11.2016 is set aside and the Civil Revision Petition is allowed. If the petitioner represents I.A.S.R.No.31400 of 2016, the learned Judge is directed to number the said I.A if it is otherwise in order and consider the said I.A and pass orders on the same on merits and in accordance with law. No costs.

Sd/
Assistant Registrar(C.S-I)



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To

The Principal Sub Judge, Madurai.

+1cc to M/s.N.Ananthapadmanabhan, Advocate, in SR No.1605.

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