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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) No.531 of 2005
and C.M.P.No.3425 of 2005

1.The District Collector,
Salem.

2.The Special Tahsildar (ADW),
Sangagiri.

3.The Tahsildar,
Sangagiri.

.. Petitioners

vs.

1.E.P.Vijayan
2.R.Ganesan
3.Chinna Gounder
4.Rajarathinam (Deceased)
5.S.Rajendran
6.N.Ramachandran
7.Venkatachalam
8.Chithan
9.Mariappan
10.Kandasamy
11.Selvam
12.Selvam
13.Chellappan
14.Venkatachalam
15.Papathi
16.R.Gnanasambandam
17.R.Venkatesan

.. Respondents

Revision filed under Article 227 of Constitution of India against the notice dated 11.06.2004 made in R.E.P.No.12 of 2004 in OS.No.219 of 1998 on the file of the District Munsif Court, Sangagiri.



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For Petitioners : No Appearance

For Respondents : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.B.Singaravelu
(for R15 to R17)

ORDER

This revision is filed by the petitioners against the notice dated 11.06.2004 issued in R.E.P.No.12 of 2004 in O.S.No.219 of 1998 on the file of the learned District Munsif Court, Sangagiri.

2. The suit being O.S.No.219 of 1998 has been filed by the plaintiffs alleging that they are the trustees of the Thalliamman Temple, situated in the suit property. Earlier, there were acquisition proceedings qua suit property by the second defendant. The plaintiffs have filed O.S.No.391 of 1981 before the learned District Munsif Court, Thiruchengode, for declaration and for permanent injunction restraining the defendants therein not to interfere with the possession of the suit property. Pending O.S.No.391 of 1981, the suit property was re-classified as Harijan Natham and the defendants 1 and 3 have never taken possession. The suit was resisted by the defendants. By the judgment dated 12.04.1988, the said suit was decreed by the trial Court.

3. When the matter was taken up for hearing on 13.02.2018, there was no representation on behalf of the petitioners, despite printing the name of the learned Government Advocate.

4. I heard Mr.AR.L.Sundaresan, learned Senior Counsel for M/s.B.Singaravelu, learned counsel appearing for the respondents 15 to 17, who are legal heirs of fourth respondent. Perused the materials available on record.

5. Suit being O.S.No.219 of 1998 has been filed by the respondents 1 to 6 for mandatory injunction directing the Government authorities to give Ryotwari patta in favour of the plaintiffs by changing the classification of the property from Harijana Village Natham poramboke and also sought changes in the revenue records namely patta, chitta, adangal and "A" Register. In the suit, the plaintiffs have also sought permanent injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the plaintiffs.



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6. By the judgment dated 14.03.2001, the trial Court decreed the suit O.S.No.219 of 1988 with costs. On a perusal of the copy of the judgment, I find that the suit was contested by the petitioners alone, who are defendants 1 to 3 therein.

7. On a further perusal of the typed set of papers, I find that the original plaintiffs in O.S.No.219 of 1998 have filed Execution Petition, being R.E.P.No.12 of 2004, against the petitioners herein for realisation of costs of the suit arrived at Rs.1269.25.

8. In the Execution Petition, the original plaintiffs sought attachment of the immovable properties of second petitioner and also sought arrest of the petitioners 2 and 3 for not effecting mutation of revenue records as ordered by the trial Court.

9. The R.E.P.No.12 of 2004 was taken on record and notice for the hearing on 21.06.2004 was issued to the respondents therein. It appears that the third petitioner herein has received the notice on 11.06.2004, which is challenged in this revision.

10. The petitioners have raised the following grounds in the revision:

(a) The Court below failed to consider that the suit filed by the plaintiff is not at all maintainable and the same has been already considered by the higher courts under Article 226 of the Constitution of India and in view of the decision rendered by the Division Bench of this Hon'ble Court in acquisition proceedings and the same was allowed to be final by the plaintiff is estopped from filing of the above suit.

(b) The court below grossly erred in decreeing the suit and also issuing the process in the Execution Petition is also perverse as the same is contrary to the decision rendered by the Hon'ble High Court under Article 226 of the Constitution of India. The conflicting nature of the finding ought to have been avoided by the court below.

(c) The court below overlooked the provision especially Order 1, Rule 8 of C.P.C. as the sit has been filed in the representative character and therefore, the requirement to be complied was not complied by the plaintiff for filing such representative suit. Therefore, the above suit is bad and liable to be dismissed on the above said grounds.



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(d) The court below ought to have held that once the award has been passed in respect of acquisition of lands, the same is not liable to be challenged by filing a civil suit under any ground.

11. The petitioners are not restrained from filing an appeal citing all the grounds referred to above. Admittedly, as against the judgment in O.S.No.219 of 1998, no appeal has been filed either by the petitioners or other defendants in the suit. Thus, the decree passed in the suit has become final. In the absence of any appeal, the defendants against whom the decree stands till date, are bound to obey the decree.

12. As stated supra, in R.E.P.No.12 of 2004, the trial Court has issued notice only. It is not the case of the petitioners that coercive action has been initiated against them. If the petitioners herein are having any objection, they can very well file their objection in the Execution Petition and contest the same. Without doing so, the petitioners have filed this revision, as if the trial Court ordered attachment of movable properties and arrest of the petitioners.

13. This Court in this revision cannot analyse/re-appreciate the merits of the matter dealt with by the trial Court. Further, the revision is premature one. Only notice of appearance in R.E.P.No.12 of 2004 was issued. If the petitioners have any grievance over the notice issued in the Execution Petition, they can very well put forth their defence in the Execution Petition and the trial Court can decide the same on merits without altering the relief granted in the suit, as the decree passed in the suit remains unchallenged till date and had thus attained finality.

14. It is seen that at the time of admission, interim stay was granted in C.M.P.No.3425 of 2005 and the interim stay is in force till date and it appears that taking advantage of such blanket stay, the petitioners are not pursuing the matter. What has been issued by the Court below is mere notice and nothing has been decided on merits all these years because of the blanket stay granted in this revision.

15. The parties approach the Court only to get a solution to the litigation, but not to get stuck in the legal battle for years without any reprieve. It is high time a quietus should be given to the matter as the notice under challenge is of the year 2004. In other words, almost 14 years had lapsed without any



decision one way or the other and the plaintiffs would succeeded way back in the year 2001, having a decree in their favour, till date could not enjoy the fruits of the same.

16. For all the reasons stated above, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17. After pronouncement of the above order, it is brought to the notice of this Court by the learned counsel for the respondents that R.E.P.No.12 of 2004 in O.S.No.219 of 1998 is pending on the file of the District Munsif Court, Sangagiri from 2004 onwards and direction may be issued to the Court below to dispose of the same in a time bound manner.

18. Considering the nature of the request, I hereby direct the learned District Munsif, Sangagiri to dispose of R.E.P.No.12 of 2004 in O.S.No.219 of 1998, within a period of two months from the date of receipt of a copy of this order, by conducting the trial on day-to-day basis without giving any adjournment to either parties and the parties shall cooperate for disposal of the suit within the stipulated time as indicated above.

19. After passing judgment and decree in R.E.P.No.12 of 2004 in O.S.No.219 of 1998, the learned District Munsif, Sangagiri is further directed to send a report to this Court to that effect.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1.The District Munsif,
Sangagiri.

2.The Section Officer,
VR Section,
High Court,
Madras.(2 Copies)



Copy to

The Section Officer,
Judicial Section,
High Court, Madras.

+1cc to M/S.B.Singaravelu, Advocate Sr.35696

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srg 12/06/2018