

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.2.2018

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.1997 of 2016 and C.M.P.No.10426 of 2016

K.Jayaraman ... Petitioner/3rd Defendant

Vs

1 K.Sagadevan ... 1st Respondent/Plaintiff

K.Alagammal (Deceased)

2 K.Loganathan ... 2nd Respondent/4th Defendant

This Civil Revision Petition is filed under Section 115 of C.P.C. against the order, dated 05.04.2016 made in I.A.No.10184 of 2015 in O.S.No.5848 of 1987 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Manohar
For Respondent No.1 : Mr.J.R.K.Bhavannathan
For Respondent No.2 : Mr.P.Rathinavel

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ORDER

The first respondent herein has filed a suit in O.S.No.5848 of 1987 against the deceased Alagammal and T.Kannappa Naicker for partition and separate possession of his half share in the suit property. In the aforesaid suit,

the first respondent herein has filed an application in I.A.No.8518 of 2015 for determining the mesne profits. On perusal of records, it reveals that the first respondent herein filed a suit in O.S.No.5848 of 1987 for partition, mense profit, rendition of accounts, appointment of Advocate Commissioner the same was dismissed on 24.9.1991, then the plaintiff preferred an appeal before this Court in A.S.No.505 of 1994, this Court allowed the appeal on 23.12.2010. The petitioner herein and the second respondent herein filed a petition for grant of probate in O.P.No.380 of 1989 before this court which was later converted into T.O.S.No.7 of 1993, finally T.O.S.No.7 of 1993 was dismissed for default on 24.8.2009. The 2nd respondent herein preferred an application No.5620 of 2009 in T.O.S.No.7 of 1993 for restoration of the same was also dismissed on 23.12.2009. The petitioner herein also filed an application No.2559 of 2012 in T.O.S.No.7 of 1993 to condone the delay in filing the application for restoration for T.O.S., the same was also dismissed by this Court on 3.8.2012. The first respondent herein had permitted to withdraw a sum of Rs.38,000/- vide cheque No.073133, dated 5.10.2001 and Rs.16,000/- vide cheque No.098239, dated 13.4.2004 by this Court. The first respondent has filed a petition for payment out of Rs.26,000/- in favour of the plaintiff by issue of cheque in the name of the first respondent herein. Further, this Court allowed the appeal in A.S.No.505 of 1994 by judgment dated 23.12.2010 which runs as follows:

"24. It has been found under Point No.1 that the plaintiff and 1st defendant are the joint owners with respect to the suit property and construction was made in the suit property by joint exertion and hence, the plaintiff is entitled for half share in the suit property. However, the rendition of accounts would arise only from the date of implementation of the respondents in the appeal. The appeal has to be allowed in part. The judgment and the decree of the court below are liable to be set aside and accordingly set aside.

25. In fine, the appeal is allowed without cost. The preliminary decree is passed in the suit as prayed for. The plaintiff is entitled to get rendition of accounts from the respondents from the date of their implementation in the appeal."

Further, during pendency of the appeal before this Court, this Court in C.M.P.No.8701 of 1994 in A.S.No.505 of 1994 passed the order which runs as follows:

"This application has been filed for appointment of an Advocate Receiver for collecting the rent from the tenants in the suit property. The petitioner in his affidavit has alleged that he is entitled to claim half share and the respondents are receiving the rent and they are spending the amount and in case if the petitioner succeeds he may not be

able to recover any amount. The respondents admitted that they are receiving the rent. In such circumstances, I do not think that it is necessary to appoint an Advocate Receiver for collecting the rent. The respondents are directed to collect the rent and deposit a sum of Rs.500/- towards the credit of the suit O.S.No.5848 of 1987 on the file of the VIII Assistant Judge, City Civil Court, Madras the first instalment is to be made on 10.11.1994 and the future instalment is to follow consecutively every month, till the disposal of the appeal. The petition is ordered accordingly.

Further, this Court passed an order in C.M.P.No.21262 of 1999 in A.S.No.505 of 1994 dated 9.7.2001 which runs as follows:

"4. In these circumstances, I think this petition has to be ordered. The petition was filed in the year 1999, seeking withdrawal of the amount with accrued interest as on date. Learned counsel for the respondents has submitted that in due compliance of the order of this court, they are continuing to deposit the amount.

5. Hence, the petitioner is permitted to withdraw the amount, standing as on date to the credit of O.S.No.5848 of 1987 without prejudice to the rights of the parties."

2 Thereafter, the instant application has been filed by the first respondent/plaintiff to pass a payment order in favour of the petitioner/plaintiff amounting to Rs.26,000/- by issuing a cheque in the name of K.Sahadevan, plaintiff from the amount deposited into the credit of O.S.No.5848 of 1987 on the file of this Court. The court below elaborately considered the application and allowed the same. Challenging the said order, the present civil revision petition has been filed by the third defendant.

2 According to the learned counsel for the petitioner, the respondents have no legal right to withdraw the amount deposited to the credit of O.S.No.5848 of 1987. However, the court below without properly appreciating the contention of the petitioner, erroneously allowed the application. Therefore, the order of the court below is liable to be set aside.

3 The learned counsel for the respondent would submit that pursuant to the order passed by this Court in C.M.P.No.21262 of 1999 in A.S.No.505 of 1994 on 9.7.2001, the petitioner has filed an application to withdraw the amount standing as on date to the credit of O.S.No.5848 of 1987 and the same was ordered.

D.KRISHNAKUMAR, J.

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

5 Considering the order passed by this Court on 9.7.2001, the court below allowed the application, thereby the petitioner was permitted to withdraw the amount standing in the credit of O.S.No.5848 of 1987. Earlier occasion also, the petitioner has filed the similar application and the same was allowed. The instant application has been filed for the very same relief pursuant to the order passed by this Court. Therefore, there is no error or illegality in the order passed by the court below. Thus, there is no warrant to interfere with the order of the court below.

Accordingly, the Civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

20.02.2018

Speaking/Non Speaking order

Index: Yes/No

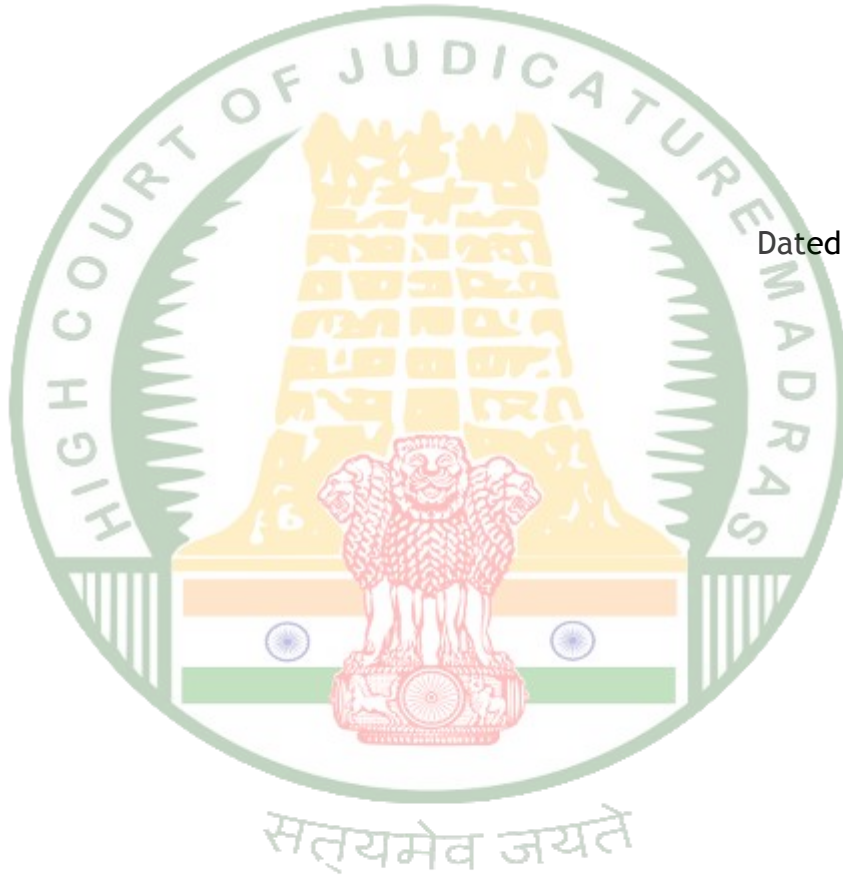
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To

The VIII Assistant Judge, City Civil Court, Chennai.

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