

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.32634 of 2013

N.Madhusoodhanan Nair

.. Petitioner

Vs.

1. The Registrar General,
Madras High Court,
Chennai-600 104.
2. The Registrar (Judicial),
Madras High Court,
Madurai bench,
Madurai-625 023.
3. The Registrar (Administration),
Madras High Court,
Madurai Bench,
Madurai-625 023.
4. The Registrar (Administration/
Public Information Officer),
Madras High Court,
Chennai-600 104.
5. The District Judge,
Kanyakumari District at Nagarcoil.
6. The Subordinate Judge,
Kuzhithurai,
Kanyakumari District.
7. The II Additional District Munsif,
Kuzhithurai,
Kanyakumari District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent to trace out the records in E.P.No.179 of 1974

on the file of District Munsif, Kuzhithurai, received by this Court for consideration in C.R.P.No.3309 of 1983 from the file of seventh respondent herein and send the same to the file of respondents 5 to 7 herein, within a time stipulated by this Court.

For petitioner : Ms.J.Anandhavalli
For respondents: Mr.C.T.Mohan

ORDER

(The Order of the Court was made by R.Subbiah, J)

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to trace out the records in E.P.No.179 of 1974 on the file of District Munsif, Kuzhithurai, received by this Court for consideration in C.R.P.No.3309 of 1983 from the file of seventh respondent herein and send the same to the file of respondents 5 to 7 herein, within a time stipulated by this Court.

2. Pursuant to the order of this Court dated 11.07.2018 passed in this Writ Petition, when the Writ Petition is taken up for consideration today, the learned counsel appearing for the respondents has produced a copy of the report of the Principal District Judge, Kanniyakumari at Nagercoil, in D.No.6866/2018-A2, dated 24.08.2018, addressed to the Registrar General of this Court and the said report reads as follows:

"D.No.6866/2018-A2, dated 24.08.2018

Honoured Sir,

Sub: Writ Petition - W.P.32634 of 2013 on the file of Hon'ble High Court of Judicature of Madras - Direction issued to traceout the case records in E.P.179/1974 in O.S.1/1960 on the file of District Munsif Court, Kuzhithurai - Report called for - Report - submitted - Regarding.

Ref: 1. Web copy of order in Hon'ble HighCourt, Madras in W.P.32634/2013, dated 11.07.2018.
2. An endorsement made by this court with copy of order communicated in D.No.5767/2018-A2, dated 11.07.2018.
3. Letter of II Additional District Munsif, Kuzhithurai in D.No.483/2018, dated 18.07.2018 received by this Court on

20.07.2018.

4. Letter of Sub Judge, Kuzhithurai in D.No.830/2018, dated 02.08.2018.

5. Copy of order Hon'ble High Court, Madras, dated 11.07.2018 in W.P.32634/2013, received by this Court on 30.07.2018.

6. Official Memorandum of this Court, dated 03.08.2018 in D.No.6312/2018.

7. Report received from the Central Record & Appeal Section of this Court dated 07.08.2018.

8. Letter of Principal District Munsif, Kuzhithurai with enclosed D.No.638/2018, dated 07.08.2018 received on this court, dated 09.08.2018.

9. Letter of Principal District Munsif, Kuzhithurai with enclosed in D.No.653/2018, dated 10.08.2018 received this court, on 13.08.2018.

10. Letter of Sub Judge, Nagercoil with enclosed in D.No.1080/2018, dated 16.08.2018.

In obedience to the Hon'ble High Court, Madras order above cited 1st & 5th, I submit that an endorsement with copy of order and official memorandum of this court cited 2 & 6 are issued to the Principal Sub Judge, Nagercoil, the Sub Judge, Kuzhithurai, Principal District Munsif, Kuzhithurai, 2nd Additional District Munsif, Kuzhithurai and Central Record Section and Appeal Section are directed to trace out the Records in E.P.179/1974 in O.S.1/1967 and submit their report as to whether the case records were traced out or not. The records were submitted to other courts. Proof for the copy of letters and their report about the records to be sent to this court on or before 09.08.2018 for onward submission to the Hon'ble High Court, Madras.

I further submit that the 2nd Additional District Munsif, Kuzhithurai stated in the letter 3rd cited above that papers regarding the E.P.179/1974 was not

pending before the 2nd Additional District Munsif Court, Kuzhithurai after tracing the same. In that connection the Sub Judge, Kuzhithurai has also stated in the letter 4th cited above that thorough search was made in this court about the record in E.P.179/1974. It is found that a CMA 77/1975 was filed before the Sub Court, Nagercoil. Since there was no Sub Court at Kuzhithurai at that time.

I further submit that the report received from the central records section and Appeal Section of this court 7th cited. The Appeal section stated that "On verification of case Register of CMA 21/1975 on the file of this Court has been transferred to Subordinate Judge's Court, Nagercoil in 04.10.1975 and the same has been renumbered as CMA.77/1975 on the file of Subordinate Judge's Court, Nagercoil and the Central Record Keeper also stated that the records in E.P.179/1974 in O.S.1/1967 was not submitted to Central Record Section Custody and the records related to CMA.77/1975 was registered in the relevant register of Central Record Section and the same CMA 77/1975 records were not submitted to the Central Record Section, Nagercoil respectively.

I further submit that the Principal District Munsif, Kuzhithurai submitted the report 8 & 9 cited in the reference that the records in E.P.179/1974 in O.S.1/1967 have already been submitted to Hon'ble District Court as per D.No.2464/1975, dated 01.10.1975 for reference in CMA.21/197 and thereafter the said bundle has not been returned to this court, "And on 16.12.2003 the Honourable High Court sent a letter to the Subordinate Judge, Nagercoil that the records in CMA.No.77/1975 preferred against the order passed in EP.179/1974 was returned on 12.05.1989 after the disposal of the CRP.No.3309/1983. Hence I submit that no bundles with respect to EP.179/1974 in O.S.1/1967 is available before this court." And she also stated in her further report that the E.P.179/1974 was filed before the 2nd Additional District Munsif, Kuzhithurai on 09.08.1974 and it was dismissed on

30.09.1977 and appeal in CMA.77/1975 was allowed by the Sub Court, Nagercoil and the CRP.No.3309/1983 filed by the Decree Holder was allowed on 12.01.1988 by the Hon'ble High Court, Madras and the Decree Holder had filed a petition to restore the Execution petition before the Principal District Munsif, Kuzhithurai on 01.12.2006 and it is pending for want of material papers and records in E.P.179/1974 which were not received by this court after disposal of CMA and CRP respectively.

I further submit that the Principal Sub Judge, Nagercoil submitted his report 10th cited that the CMA 21/1975 was preferred before the Hon'ble District Court, Nagercoil and then transferred to Principal Sub Court, Nagercoil as per the order of District Court Nagercoil on 07.10.1975 and the CMA was renumbered as CMA 77/1975 and disposed of on 07.04.1978 and the same records were submitted to Hon'ble High Court, Madras through letter of his predecessor in D.No.2111/2013, dated 26.12.2013 and there is no records available in the court. As such, no registers more than 30 years old and the records like Despatch register, Inward Register and Destruction Register are not available and the registers are very old and the register might have been destroyed as per destruction Rules.

I further submit that considering all the reports of above said Judicial Officers and Central Records Section and Appeal Section of this court 3, 4, 7, 8 and 9 cited in the references that the records in E.P.179/1974 had been sent to Principal Subordinate Court, Nagercoil. In that connection the Principal Subordinate Judge, Nagercoil also submitted that CMA 77/1975 was not preferred against the order passed by the learned II Additional District Munsif, Kuzhithurai dated 26.11.1974 and the main EP.179/1974 was adjourned to 09.12.1974 and that no particulars are available in the CMA register and the relevant registers were destroyed as per destruction rules. The Principal Subordinate Judge, Nagercoil has enclosed the copy CMA register with his report for perusal.

I further submit that the 2nd Additional District Munsif, Kuzhithurai also stated in the report 9th cited above that the complainant alleged that he had filed a restoration petition on 23.06.1999 and was not numbered for past 14 years. However on perusal of CRP Register it is seen that no said petition was filed by the petitioner on 23.04.1999 as alleged by him. The complainant failed to approach the executing court immediately after disposed of CRP in the year 1983, but he approached the executing court with restoration petition only in the year 2006 as revealed from records. The copies of order passed on 06.11.1974 in E.P.179/1974 in OS.1/1967 and order passed in CMA.77/1975 are enclosed with her report for perusal.

I further submit that the petitioner namely Madusoodhanan, S/o Nadarajapillai as stated in the copy of order 5th cited already submitted a petition on 14.01.2008 before the Hon'ble High Court, Madras as "may be pleased to pass order either to trace out the bundle in E.P.179/1974 in OS.1/1967 of the court of the District Munsif, Kuzhithurai or to reconstruct the same and dispose of on merits" and such copy of petition is enclosed herewith alongwith the report of Principal District Munsif, Kuzhithurai cited 8th reference.

In this circumstances I humbly submit that on the basis of reports of above said officers, the records in E.P.1/1974 may order to be considered for reconstruction.

I further submit the copy of letters with enclosures cited in the reference 3, 4, 7, 8, 9 & 10 are enclosed herewith.

I further humbly submit this report for your Honours kind perusal."

WEB COPY

3. In view of the above report, we are of the opinion that, except to direct the seventh respondent/II Additional District Munsif, Kuzhithurai, Kanyakumari District, to re-construct the bundle in E.P.No.179 of 1974 in O.S.No.1 of 1967, no other order could be passed in this Writ Petition. Accordingly, the seventh respondent/II Additional District Munsif, Kuzhithurai, Kanyakumari District, is directed to re-construct the bundle in

E.P.No.179 of 1974 in O.S.No.1 of 1967, within a period of four weeks from the date of receipt of a copy of this order and proceed with the matter.

4. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Registrar General,
Madras High Court,
Chennai-600 104.
2. The Registrar (Judicial),
Madras High Court,
Madurai bench,
Madurai-625 023.
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Madras High Court,
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Kuzhithurai,
Kanyakumari District.
7. The II Additional District Munsif,
Kuzhithurai, Kanyakumari District.

+1cc to Mr.J.Anandhavalli, Advocate SR.NO.60758

SV(CO)

sm:27.9.2018

W.P.No.32634 of 2013