



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.08.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.NPD[MD]No.132 of 2018

Rekha Bhavani

: Petitioner

Vs.

Rathinamani (Died)

1.Jeyasingh

2.John Santhakumari

3.Robin Chandrakumar

4.Beulah Peramakumari

: Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to allow the Civil Revision Petition by setting aside the order dated 02.11.2017 passed in I.A.No.392 of 2016 in O.S.No.207 of 2013 on the file of the Hon'ble District Munsif cum Judicial Magistrate Court, Kodaikanal, Dindigul District.

For Petitioner : Mr.Joseph Thathues Jerome

For Respondents 1 & 4 : Mr.R.Srinivasan

For Respondents 2 & 3 : No appearance

O R D E R

The revision petitioner is a third party to O.S.No.207 of 2013, on the file of the District Munsif cum Judicial Magistrate Court, Kodaikanal, Dindigul District. It is a suit for injunction filed by the respondents herein against one Mariyammal. The suit was decreed ex-parte on 07.12.2015. The said Mariyammal passed away. The revision petitioner claims that she is the niece of the said Mariyammal and that the said Mariyammal had executed a Will in her favour, in respect of the suit property. Therefore, claiming locus standi, revision petitioner filed an Interlocutory application for setting aside the said ex-parte judgment and decree. It appears that the same was filed out of time. Therefore, to condone the delay, I.A.No.392 of 2016 was filed. The Court below by order dated 02.11.2017, dismissed the said Interlocutory Application. Challenging the same, this Civil Revision Petition is filed.



2. Heard the learned Counsel on either side.

3. This Court is of the view that the Court below went beyond the scope of the enquiry and proceeded to give findings with regard to the entitlement of the revision petitioner herself. Such an approach is wholly unwarranted. Therefore, all the findings rendered against the revision petitioner stand vacated.

4. The revision petitioner claims that based on the ex-parte judgment and decree in O.S.No.207 of 2013, the plaintiffs resorted to criminal trespass and dispossessed Mariyammal and also demolished the residential house. This Court does not want to go into the merits of the case. But, the fact remains that writ proceedings had been instituted earlier and by order dated 22.09.2014, a learned Judge of this Court in CONT P[MD]No.1331 of 2017, observed as follows:

"12. However, this Court is of the opinion that the conduct of plaintiffs to file the suit for permanent injunction is not proper, if the facts stated by the petitioners are true. Since the petitioner has been dispossessed by virtue of an order of Court, and the ex-parte decree was stated to be secured by suppressing material facts, it is open to the petitioner to seek appropriate remedy before the Civil Court by filing a separate suit for recovery of possession and for damages. The petitioner is also entitled to claim compensation for the cost of the building and for the criminal trespass committed by the persons concerned."

5. In the light of the observations already made by the learned Judge of this Court in the other proceedings, this Court is of the view that the petitioner is having liberty to institute such a suit. Obviously, limitation will not come in the way. Thus, reserving the liberty of the revision petitioner to institute a separate suit for vindicating her rights in accordance with law and vacating the adverse findings rendered against the revision petitioner by the Court below, this Civil Revision Petition is disposed of. No costs.

Sd/-
Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)



To
The District Munsif cum Judicial Magistrate Court,
Kodaikanal,
Dindigul District

• 1 CC TO Mr.S.ALAGUSUNDAR , ADVOCATE IN SR No. 81254.

MR
DS RP SAR3 29 10 2018 3P 3C

ORDER MADE IN
C.R.P.NPD[MD]No.132 of 2018

30.08.2018