



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

C.R.P. (NPD) (MD) Nos. 1191 and 1193 of 2014C.R.P. (NPD) (MD) No. 1191 of 2014:-Vetriselvi ... Petitioner/7th Defendant

Vs.

1.Kaliammal

2.Palaniammal

3.Manickavalli

... Respondents 1 & 2/Plaintiffs

... 3rd Respondent/8th Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.510 of 2011 in I.A.No.1698 of 2006 in O.S.No.375 of 1985 on the file of District Munsif Court, Palani dated 03.10.2013.

For Petitioner : Mr.M.P.Senthil
For R1 & R2 : Mr.A.Prasanna Rajadurai
For R3 : M/s.Sarvabhuman Associates
for S.Anand Chandrasekar

C.R.P. (NPD) (MD) No. 1193 of 2014:-

1.S.K.Rajendran

2.Vetriselvi

... Petitioner/7th Defendant

Vs.

1.Kaliammal

2.Palaniammal

3.Manickavalli

... Respondents 1 & 2/Plaintiffs

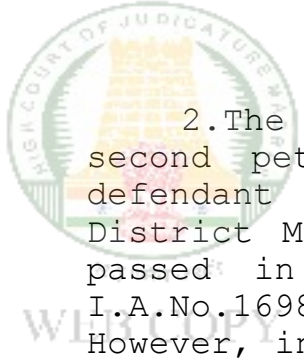
... 3rd Respondent/8th Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.511 of 2011 in I.A.No.1698 of 2006 in O.S.No.375 of 1985 on the file of District Munsif Court, Palani dated 03.10.2013.

For Petitioner : Mr.M.P.Senthil
For R1 & R2 : Mr.A.Prasanna Rajadurai
For R3 : M/s.Sarvabhuman Associates
for S.Anand Chandrasekar

COMMON ORDER

These Civil Revision Petitions have been filed against the order passed by the learned District Munsif Court, Palani, in I.A.Nos.510 and 511 of 2011 in O.S.No.375 of 1985.



2.The first petitioner in C.R.P(MD).No.1191 of 2014 and the second petitioner in C.R.P(MD).No.1193 of 2014 is the seventh defendant in the suit in O.S.No.375 of 1985 on the file of the District Munsif Court, Palani. Pursuant to the preliminary decree passed in O.S.No.375 of 1985, a final decree application in I.A.No.1698 of 2006 was filed by the plaintiffs in the suit. However, in the said final decree application, the seventh defendant was set ex- parte. Hence, the petitioners filed an application in I.A.No.510 of 2011 to set aside the ex parte order passed in the final decree proceedings. Another application was filed in I.A.No.511 of 2011 by the revision petitioners to permit the Power of Attorney to prosecute the case on behalf of the seventh defendant in the suit. These two applications were dismissed by the trial Court.

3.The first application in I.A.No.510 of 2011 was dismissed on the ground that the petitioners were set ex parte since counter was not filed and that the reason stated in the accompanying affidavit that the petitioners have gone to Kerala was not acceptable. Further, it is pointed out that the interlocutory application in I.A.No.440 of 2008, which was filed earlier by the revision petitioners to receive the counter, was dismissed on merits on 04.08.2010 on the ground that a separate application to set aside the order setting the seventh defendant was not filed. Since the present application has not been filed within a reasonable time, the trial Court observed that there is no merit in the application filed by the petitioners to set aside the order setting the seventh defendant ex parte.

4.The learned Counsel appearing for the revision petitioners submitted that the revision petitioners have valid objection with regard to the proposed allotment and an opportunity should be given to them to contest the final decree application on merits. It is further stated by the learned Counsel that the reasons for dismissing the application are not proper. This Court is able to see that the earlier application filed by the revision petitioners in I.A.No.448 of 2008 to receive the counter was dismissed on the ground that a separate application to set aside the ex parte order was not filed. However, the application to set aside the order setting the revision petitioners ex parte was dismissed only on the ground of delay. Though there is some delay on the part of the revision petitioners to file an application to set aside the order setting them ex parte, this Court is of the view that an opportunity can be given to the petitioners.

5.As a result the Civil Revision Petition in C.R.P.No.1191 of 2014 is allowed and the order passed by the Lower Court in I.A.No.510 of 2011 in I.A.No.1698 of 2006 in O.S.No.375 of 1985 on the file of the District Munsif Court, Palani is set aside. The application in I.A.No.510 of 2011 in I.A.No.1698 of 2006 in O.S.No.375 of 1985 stands allowed.



6. Insofar as C.R.P. (MD) No. 1193 of 2014 is concerned, I.A. No. 511 of 2011 was dismissed by the trial Court mainly because the connected application in I.A. No. 510 of 2011 was dismissed. The seventh defendant of-course has been contesting the case by herself. However, that cannot be a reason to dismiss the application seeking permission to the power of attorney agent to prosecute the matter on behalf of the seventh defendant. Since the order of learned District Munsif, Palani is purely consequential to the order in I.A. No. 510 of 2011 and this Court has already set aside the order in I.A. No. 510 of 2011, revision petitioners are entitled to succeed.

7. As a result, the civil revision petition C.R.P. (MD) No. 1193 of 2014 is also allowed and the application in I.A. No. 511 of 2011 in I.A. No. 1698 of 2006 in O.S. No. 375 of 1985 on the file of the District Munsif Court, Palani stands allowed.

8. Since the matter is pending for quite sometime before this Court and the preliminary decree in O.S. No. 375 of 1985 was passed long back, this Court feels that it would be appropriate to direct the Lower Court to dispose the final decree application as expeditiously as possible. Hence, the learned District Munsif, Palani is directed to expedite the trial and dispose of I.A. No. 1698 of 2016 in O.S. No. 375 of 1985, within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Munsif, Palani.

+1cc to M/S.M.P.Senthil, Advocate SR.No. 67720
+1cc to M/S.A.Prasanna Rajadurai, Advocate SR.No. 67968
+1cc to M/S.Sarvabhuman Associates, Advocate SR.No. 67707

C.R.P. (NPD) (MD) Nos. 1191 and 1193 of 2014
11.06.2018

rmk/cmr
JM/SB/SAR 4/02.07.2018/3P/5C