



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.06.2018
CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (MD) (NPD) No.1075 of 2018

Thavamani

.. Petitioner / Petitioner /
Respondent / Defendant

Vs.

Mayilammal

.. Respondent / Respondent /
Petitioner / Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, to direct the Sub Court, Theni to number the E.A.Sr.No.7926 of 2017 on the file of the Subordinate Court, Theni.

For Petitioners : Mr.R.Saravanan

ORDER

The revision petition has been filed by the petitioner / defendant to direct the learned Sub Judge, Theni to number the E.A.Sr.No.7926 of 2017 on the file of the Subordinate Court, Theni.

2. According to the petitioner the respondent / plaintiff has filed a suit in O.S.No.47 of 2005 on the file of the Sub Court, Periyakulam for the recovery of a sum of Rs.2,80,000/-. In the said Suit, the petitioner was set exparte and exparte decree was passed. Challenging the above exparte order, the petitioner has preferred an appeal suit in A.S.No.17 of 2015 and the same is pending before the Sub Court, Theni. In the meantime, when the appeal suit is pending, the petitioner filed instant application to grant permission to receive the deposited amount before the trial Court. Now, he filed an application to withdraw the above said amount and the same was returned with an endorsement "petition is not maintainable". According to the petitioner, already property has been attached in the above said suit and therefore it amounts to double jeopardy. Hence, he seeks to entertain and to number the said application before the Appellate Court.

3. It is also admitted that the petitioner/defendant has deposited the above said decree amount in the execution proceedings and the said deposited amount is not lying with the trial Court. The appeal Suit in A.S.No.17 of 2015 is not pending before the Appellate Court. At this juncture, the said application filed by the petitioner seeking for refund of amount cannot be entertained.



4. Therefore, this Court cannot find any prima facie case to entertain this petition. Further, it is also made clear that it is open to the petitioner to file an application before the Court concerned seeking for the relief of refund of the above said amount, after the disposal of the above said A.S.No.17 of 2015, if it is permissible in law. Now, the learned counsel for the petitioner seeks appropriate direction to the Court below to dispose of the Appeal Suit within a time limit that may be fixed by this Court.

5. In fine, this Civil Revision Petition is dismissed with a direction to the learned Sub Judge, Theni to dispose of the appeal suit in A.S.No.17 of 2015 on merits and in accordance with law, within a period of three months from the date of receipt of the copy of this order. No Costs.

Sd/-

Assistant Registrar(Crl. Side)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Theni.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.R.SARAVANAN, Advocate, SR.No.67904

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PJL

ES/JC/SAR 3/27.06.2018/2P/5C