



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1082 of 2018

and C.M.P. (MD) No.4705 of 2018

WEB COPY

1.R.Thangaiah Thevar

2.Lakshmi

... Petitioners/Petitioners/

Respondents/Defendants

-vs-

Lakshmi Ammal

... Respondent/Respondent/

Petitioner/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to allow the Civil Revision Petition and directed the learned 1st Additional District Munsif Court, Tirunelveli to number the Unnumbered E.A.No.of 2018 in E.P.No.2 of 2016 in O.S.No.434 of 2012 on the file of the 1st Additional District Munsif Court, Tirunelveli dated 25.04.2018, and thus render justice. .

For Petitioners : Mr.P.Subbaraj

O R D E R

The Revision Petitioners are the defendants in the suit in O.S.No.434 of 2012 on the file of the 1st Additional District Munsif Court, Tirunelveli and the suit was filed by the plaintiff for declaration, recovery of possession, etc. The said suit was decreed in favour of the plaintiff with a direction to the revision petitioners herein to hand over the possession within three months. Subsequently, the plaintiff had filed E.P.No.2 of 2016 for execution of the order passed by the Trial Court, which stood allowed in favour of the plaintiff. Against the said order, the revision petitioners / defendants sought to file an Execution Application, which was returned on the ground that the correct provisions of law have not been mentioned. Challenging the return, this revision petition has been filed.

2. It is the case of the revision petitioners / defendants that even though against the decree of the Trial Court, the petitioners have filed an appeal in A.S.No.34 of 2018 on the file of the learned Subordinate Judge, Tirunelveli, the Executing Court, without waiting for the outcome of the appeal, has allowed the application filed by the plaintiff for execution, pursuant to which, the plaintiff and her men are taking steps to take possession of the suit property, which will deprive the rights of the petitioners in the appeal. It is the further case of the revision petitioners that against the order passed in E.P.No.2 of 2016, the petitioners filed an Execution Application, which was not entertained by the Trial Court on some filthy reasons. In the event of the Execution



Application not numbered and taken on file, it will cause great prejudice to the petitioners and therefore, the application would be ordered to be numbered in the interest of justice.

3. Heard the learned counsel for the petitioner and the notice to other side is dispensed with, in view of the nature of disposal of this case. This Court also perused the material documents available on record.

4. A circumspection of the fact would reveal that admittedly, the revision petitioners did not succeed in the suit and were ordered to hand over the possession within the stipulated period. It is seen that against the said judgment and decree, the revision petitioners duly filed an appeal in A.S.No.34 of 2018 before the learned Subordinate Judge, Tirunelveli within the prescribed time limit. In the interregnum period, the plaintiff filed E.P.No.2 of 2016, which ended in her favour and though the revision petitioners have filed the application against the order of the Executing Court, owing to non-mentioning of the relevant provisions of law, the application was refused to be entertained.

5. It is pertinent to mention here that mere mistake committed in indicating the exact provisions should not take away the entire rights of a party, rather the Court should afford an opportunity even to the loser to put forth his / her contentions and thereafter, decide as to the further course of action to be taken under the provisions of law. Therefore, I find force in the contention raised by the petitioners that in the event of the Execution Application not numbered and heard on merits, it will have a bearing on the appeal filed by them in A.S.No.34 of 2018 pending on the file of the learned Subordinate Judge, Tirunelveli. Hence, this Court is of the view that it will serve the interest of justice, if the Execution Application is ordered to be numbered and disposed of in a time bound manner.

6. In the result,

(a) the Civil Revision Petition is allowed;

(b) the 1st Additional District Munsif, Tirunelveli is directed to number the Execution Application in E.P.No.2 of 2016 in O.S.No.434 of 2012 and dispose of the same within a period of one month from the date of receipt of a copy of this order.

No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/



To:

1.The I Additional District Munsif,
Tirunelveli.

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

+1CC to Mr.P.Subbaraj, Advocate in SR.No.66799.

AR

DS/SKN-RSK/SAR-2 :22.06.2018: 3P/5C

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