



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.1908 of 2017
and
CMP (MD) No.9846 of 2017

Natarajan ... Petitioner/1st Defendant
vs.

Thankappan

1) Russel

2) Kannammal

3) Jayasekar

4) Asai Thampi

5) Arivalagan @ Thurai

6) Glory

7) Pethuru

... Respondents/Respondents 2 to 6

... Respondents/Respondents No.8

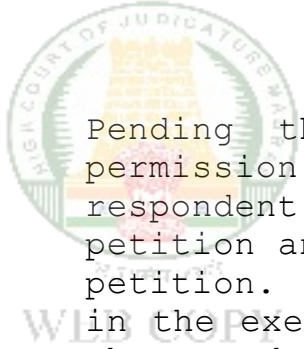
Petition filed under Section 115 of the Civil Procedure Code, against the order passed in E.A.No.257 of 2016 in E.P.No.38 of 2015 in O.S.No.492 of 1994 on the file of the Principal District Munsif, Kuzhithurai, dated 22.08.2017.

For Petitioner : Mr.E.K.John Victor Ellis
For Respondents : Mr.T.Selvakumaran

ORDER

This Civil Revision Petition has been filed against the order passed in E.A.No.257 of 2016 in E.P.No.38 of 2015 in O.S.No.492 of 1994 on the file of the Principal District Munsif, Kuzhithurai, dated 22.08.2017.

2.The revision petitioner is 1st defendant in the suit. The suit was filed by the deceased Thankappan for partition of suit property comprising re-survey No.451/6, Kunnathoor Village. The plaintiff purchased 3½ cents of land in the suit property from Pethiru Nadar under a registered sale deed dated 02.04.1984. The Trial Court decreed the suit by allotting 3.5 cents in the suit property to the plaintiff and the first appeal and second appeal filed by the 1st defendant against the judgment and decree of the trial Court ended in favour of the plaintiff, confirming the judgment and decree of the Trial Court. The 1st defendant also filed O.S.No.391 of 2013 and in the said suit, an injunction was also granted against the deceased plaintiff in I.A.No.632 of 2013.



Pending the above suit, the deceased plaintiff without the permission of the court, alienated the suit property to the 1st respondent herein and suppressed the same in the execution petition and the 1st respondent was also impleaded in the execution petition. Hence, the revision petitioner filed E.A.No.257 of 2016 in the execution petition to resist the delivery of possession to the purchaser/deed holder which was dismissed by the Court below, against which, the present revision petition has been filed.

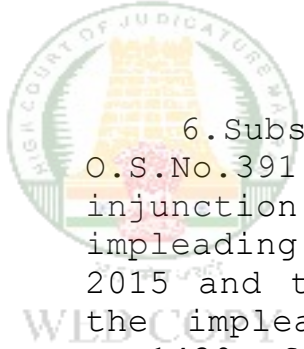
3.Perusal of the records shows that the judgment and decree passed in the suit has been confirmed in the first appeal and on second appeal in S.A(MD)No.746 of 2008, by judgment dated 21.04.2011, this Court held as follows:-

'The trial Court without considering the documents filed on either side properly has erroneously dismissed the suit. The first appellate Court after valuating the evidence properly has rightly decreed the suit. In view of the discussions made earlier, this Court has not found any error in the judgment and decree passed by the first appellate Court and further the substantial questions of law raised in the present second appeal are not having substance at all and altogether the present second appeal deserves to be dismissed.'

4.Perusal of the record further shows that as against the abovesaid judgment passed in the second appeal, Special Leave to Appeal (Civil) No.28364/2011 was filed before the Supreme Court and the same was also dismissed on 01.07.2013. On 18.09.2013, the respondent in the second appeal sold the suit property to the 1st respondent herein. During the pendency of execution petition, Thangappan died on 21.09.2015 and legal heirs of Thangappan as well as the subsequent purchaser were impleaded.

5.It is seen from the records that after hearing the argument, the Execution Court passed the following order:-

'Moreover the petitioner has not clarified the court as to how the suit for partition is not the proper remedy and the 1st respondent ought to have sought for the relief of declaration and recovery of possession. Above all the contention raised by the petitioner herein were raised in the trial court and their contentions were negatived by the Appellate Court and therefore, the petitioner cannot now reagitate the matter in the executing court, if this court allow this petition it will amount to circumvent the decree passed by the appellate court and so this court is not inclined to allow this application.'



6. Subsequently, the petitioner also filed a suit in O.S.No.391 of 2013 for declaration of title and permanent injunction. In that suit, the 1st respondent herein has filed an impleading petition to implead himself as party in I.A.No.649 of 2015 and the same was allowed. Against the said order allowing the impleading petition the revision petitioner filed CRP(MD) No.1430 of 2016 and this Court dismissed the said revision holding that the Trial Court having found that the 1st respondent is proper and necessary party to the suit allowed the application on payment of cost of Rs.500/-.

7. Perusal of the records also shows that the Execution Court has dealt with the issues elaborately and the matter has gone upto the Hon'ble Supreme Court and ended in favour of the plaintiffs. If at all the petitioner is aggrieved by any order, he can only file appeal against the said order. The learned Judge has elaborately discussed and has dismissed the application. In my considered opinion, the impugned order passed by the learned Judges does not require any interference.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Kuzhithurai.

+1cc to Mr.E.K.John Victor Ellis, Advocate Sr.No.45268
+1cc to Mr.T.Selvakumaran, Advocate Sr.No.45612

BALA

VB/JC/SAR2/21.02.2018/3P/4C

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