



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

C.R.P (NPD) (MD) .No.1224 of 2018

and

CMP (MD) .No.5198 of 2018

Kamaraj

... Petitioner

Vs.

1.Mamundi

2.Meenambal

3.Devaraj

4.C. Ganesan

... Respondents

Prayer: This Civil Revision Petition is filed under Section 115 CPC to set aside the order dated 12.04.2018 made in E.P.No.335 of 2017 in O.S.No. 208 of 2005 on the file of the Principal Sub Court, Dindigul, Dindigul District by allowing the Civil Revision Petition.

For Petitioner

... Mr. G. Gomathi Sankar

For respondent No.1

... Mr. S. Balaji

ORDER

The petitioner has filed the present Civil Revision Petition to set aside the order, dated 12.04.2018 made in E.P.No.335 of 2017 in O.S.No. 208 of 2005, on the file of the Principal Sub-Court, Dindigul, Dindigul District.

2. The revision petitioner is the first defendant in a suit in O.S.No.208 of 2005 and the Judgment Debtor in the Execution Petition in E.P.No. 335 of 2017, on the file of the Principal Subordinate Court, Dindigul, Dindigul District.

3. It is the case of the revision petitioner that though the suit in O.S.No. 208 of 2005, was decreed in favour of the first respondent / plaintiff, the petitioner has filed an appeal suit in A.S.No. 44 of 2010 and A.S.No.40 of 2014, before the Principal District Court, Dindigul and the said appeals were dismissed. Against which, the petitioner has filed Second Appeals in S.A.Nos. 303 and 304 of 2017 and the same are pending before this Court. While pending the above said Second Appeals, the first respondent / plaintiff has filed an Execution Petition in E.P.No.335 of 2017, before the Principal Subordinate Court, Dindigul, Dindigul District and in the said Execution Petition, delivery order was passed in favour of the first respondent / plaintiff. Challenging the said order, the petitioner has filed the present Civil Revision Petition.



4. I have heard Mr.Gomathi Sankar, learned counsel appearing for the petitioner and Mr.S. Balaji, learned counsel appearing for Caveator / first respondent.

5. The learned counsel appearing for the Caveator / first respondent / plaintiff has informed before this Court that as against the ex parte order passed in E.P.No.335 of 2017, the revision petitioner herein has filed an Execution Application along with condone delay application for setting aside the ex parte order. While pending the execution application, the revision petitioner herein has filed the present Civil Revision Petition challenging the original ex parte order passed in the Execution Petition, which is not maintainable.

6. Admittedly, once the revision petitioner has filed an application to set aside the ex parte order passed in Execution Petition, he has no right to question the original ex parte order passed in the Execution Petition. Hence, this Civil Revision Petition is not maintainable and as such, I am not inclined to allow this Civil Revision Petition.

7. In the result,

(i) this Civil Revision Petition is dismissed, confirming the order passed in E.P.No.335 of 2017 in O.S.No. 208 of 2005, on the file of the Principal Sub Court, Dindigul, Dindigul District.

(ii) Though the petitioner has filed an application along with condone delay application in Execution Petition to set aside the ex parte order, the Trial Court is directed to pass suitable orders in the condone delay application within a period of one month from the date of receipt of a copy of this order and thereafter, pass appropriate orders in the set aside application within a period of four weeks.

(iii) After passing orders in both the applications, the Executing Court is directed to proceed with the Execution Petition in accordance with law.

(iv) The petitioner is directed to work out his remedy, if any, before the Second Appeal.

(vi) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)



To

The Principal Sub Judge, Dindigul, Dindigul District.

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The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G. Gomathi Sankar, Advocate Sr.No.69726
+1cc to Mr.S. Balaji, Advocate Sr.No.69875

TRP

VB/SB/SAR2/09.07.2018/3P/6C

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