



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1449 of 2018

WEB COPY

1. Sivakishore
2. Shobanasundaravalli

... Petitioners/R2 & R3/
Petitioners/Plaintiffs

-VS-

1. Kasimuthu
2. Petchi Ammal
3. Padma
4. Kasthuri
5. Kalyani

... Respondent/1st Respondent/
Respondent/Defendant

... Respondents/Petitioners/
3rd Party/3rd Party

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to grant direction to expedite the proceedings for disposal of the E.A.No.81 of 2008 in E.P.No.30 of 2003 in O.S.No.181 of 2001 on the file of the District Munsif Court, Valliyoor, Tirunelveli District by allowing this Civil Revision Petition.

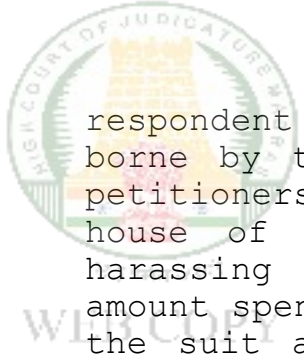
For Petitioners : Mr.R.John Sathyan

ORDER

The Revision Petitioners are the plaintiffs in the suit in O.S.No.181 of 2001 on the file of the District Munsif Court, Valliyoor, Tirunelveli District and the suit was filed by the plaintiffs, claiming maintenance, etc. The said suit was decreed on 04.11.2003 in favour of the plaintiffs. Subsequently, the plaintiffs had filed E.P.No.30 of 2003 for execution of the order passed by the Trial Court. In the meanwhile, the sisters of the 1st defendant, who are 3rd parties to the suit, filed E.A.No.81 of 2008 in E.P.No.30 of 2003 in O.S.No.181 of 2001 on the file of the District Munsif Court, Valliyoor, Tirunelveli District, for declaration that the schedule properties cannot be subjected for sale by auction among various other reliefs, which is admittedly pending even after grant of several adjournments. Hence, the petitioners are before this Court, seeking speedy disposal of the said application.

2. For the sake of convenience, the parties are referred to as per their original nomenclature mentioned in this petition.

3. It is the case of the revision petitioners / plaintiffs that they are the son and wife of the 1st respondent / defendant respectively and the 1st respondent neither took care of them nor gave any penny for their livelihood. In the meanwhile, the 1st



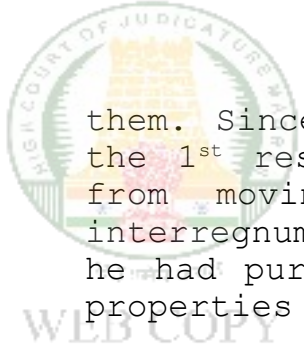
respondent met with an accident and the entire medical expenses were borne by the father of the 2nd plaintiff. It is the case of the petitioners that the 1st respondent, after his recovery, left the house of the plaintiffs, joined his sisters and again started harassing the plaintiffs and he also refused to return back the amount spent for his treatment. Therefore, the petitioners had filed the suit against the 1st respondent and though it was decreed in their favour and a petition was also filed for execution of the order, the respondents 2 to 5, claiming to be sisters of the 1st respondent and also claiming to have interest in the suit schedule property, filed E.A.No.81 of 2008 in E.P.No.30 of 2003 for declaration to the effect that the suit schedule property was an ancestral property.

4. The petitioners state that the said application was filed only to drag on the proceedings so as to prevent the suit from attaining its finality. Subsequently, the 2nd petitioner has filed M.C.No.13 of 2009 on the file of the learned Judicial Magistrate, Valliyoor, for maintenance and though the said case ended in her favour, still, the 1st respondent did not pay any pie to them. Contending that the 2nd petitioner has been struggling to maintain herself and the 1st petitioner; that though the 1st petitioner was qualified in the NEET examination to apply for MBBS Course, non payment of money by the 1st respondent has almost shuttered the dream of the 1st petitioner to become a Doctor, it is prayed that a direction may be issued to the Trial Court for speedy disposal of E.A.No.81 of 2008 in E.P.No.30 of 2003 in O.S.No.181 of 2001 on the file of the District Munsif Court, Valliyoor, Tirunelveli District, so as to render a substantial justice to the petitioners.

5. Heard the learned counsel for the petitioners 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.

6. It is a peculiar case, where the petitioners, namely, the wife and the son were let down by the 1st respondent / husband for the best reasons known to him, despite there being no serious dispute between them. In the plaint, it was averred that though was a difference of opinion, arisen in their matrimonial life within three years of their marriage, as per the saying that "Blood is thicker than water", when the 1st respondent met with an accident, the 2nd petitioner along with her parents extended all support to him to ensure his recovery from the illness, inspite of which, the 1st respondent again deserted them and failed to take care them as a token of gratitude.

7. To add fuel to fire, the sisters of the 1st respondent / 3rd parties also filed E.A.No.81 of 2008 for declaration that the suit property is an ancestral property in order to stall further proceedings in E.P.No.30 of 2003 in O.S.No.181 of 2001, as the execution petition in E.P.No.30 of 2003 was filed by the petitioners for payment of amount as ordered by the Trial Court, failing which, to take steps to auction the property to settle the amount due to



them. Since a cloud was created on the property by the sisters of the 1st respondent, the Trial Court was quite naturally prevented from moving further with the execution proceedings. In the interregnum period, one Joseph had filed applications, stating that he had purchased the suit schedule property on 28.08.2003 and the properties cannot be subjected for sale by auction.

8. Be that as it may, though the petitioners have obtained an order from the Civil Court, they are unable to enjoy the fruits of decree. It is seen from the documents that the application in E.A.No.81 of 2008 was received on 25.03.2008 by the Trial Court and even after several listings and hearings, there was no progress in the case, which made the petitioners to undergo mental sufferings. It is pertinent to mention here that the only hope for the affected parties is the Court of law and in this case, even after obtaining a favourable order from the Court, the petitioners are made to suffer continuously pursuant to the subsequent lis filed one after the other, which has made the life of the 1st petitioner a questionable one. There is a maxim that justice delayed is justice denied and in the present case on hand, though substantial justice has been rendered to them by the Trial Court, it has not reached the hands of the petitioners for enjoyment. Therefore, this Court is of the view that keeping the matter pending endlessly would definitely make the petitioners to lose their faith in the justice delivery system as well as in the Constitution of India and also taking into consideration the limited extent of relief sought for in this petition, it will serve the interest of justice, if the Execution Application is ordered to be disposed of in a time bound manner.

9. In the result,

(a) this Civil Revision Petition is allowed;

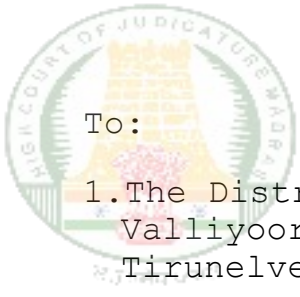
(b) the learned District Munsif, Valliyoor, Tirunelveli District is directed to dispose of E.A.No.81 of 2008 in E.P.No.30 of 2003 in O.S.No.181 of 2001, within a period of two months from the date of receipt of a copy of this order, by conducting the case on day-to-day basis without giving any unnecessary adjournments to either parties and without entertaining any more applications in connection with the present issue (as the suit is of the year 2001) and both the parties are directed to give their fullest cooperation for early disposal of the application within the time stipulated by this Court as above.

No costs.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/



To:

1.The District Munsif,
Valliyoor,
Tirunelveli District.

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

+1CC to Mr.R.JOHN SATHYAN, Advocate, SR.No. 73172

C.R.P. (PD) (MD) No.1449 of 2018
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ES/SKN/RSK/SAR 4/20.08.2018/4P/5C