



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. (PD) (MD) No.1673 of 2016
and C.M.P. (MD) No.8161 of 2016

R.Thirumalaisamy

... Petitioner/Petitioner/3rd Party/
LR of 2nd Defendant

-Vs-

R.Abdul Vahab (Died)

Haasiah Beevi (Died)

1. Kathimnisha
2. Kalibulla
3. Oliyulla
4. Ismail
5. Kaja Maideen
6. Ziyavudeen
7. Jafar Ali
8. Babu Rahmaan

... Respondents 1 to 8/Respondents 1 to 8
/Petitioners 3 to 10/LRs of Plaintiff

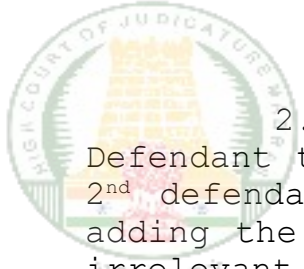
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 18.07.2016 returning the petition filed by the petitioner in unnumbered E.A.SR.No.3696 of 2016 in E.P.No.905 of 1996 in O.S.No.353 of 1979 on the file of the District Munsif, Palani.

For Petitioner : M/s.T.A.Ebenezer

For Respondents : Mr.T.Lenin Kumar (For Caveator)

ORDER

The original plaintiff had filed a suit in O.S.No.353 of 1979 on the file of the District Munsif, Palani for recovery of money, etc and though the suit was dismissed, in the appeal filed by the plaintiff in A.S.No.93 of 1993, the plaintiff was able to succeed, against which, the defendant filed S.A.No.1177 of 1994 and the said appeal was dismissed at the admission stage itself. Subsequently, the plaintiff filed a petition for execution of the order in E.P.No.905 of 1996 in O.S.No.353 of 1979 on the file of the District Munsif, Palani, which was ordered on 12.04.2016. While so, the revision petitioner, claiming himself to be the legal heir of the 2nd defendant, sought to file an application, which was returned by the learned District Munsif, Palani, directing to adduce more evidence in support of his claim. Challenging the return, this revision petition has been filed.



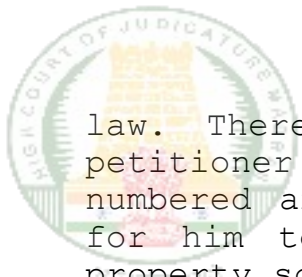
2. It is the case of the revision petitioner / LR of 2nd Defendant that during pendency of the suit, his father, who was the 2nd defendant in the suit, had expired and the plaintiff, without adding the real legal heir of the 2nd defendant, had impleaded some irrelevant persons showing as his legal heirs, thereby succeeded in the suit. The mother of the petitioner and other fake legal heirs, who have subsequently died, were purposely set exparte both in the suit and during appeal proceedings. It is the further case of the revision petitioner that the factum of such adverse order passed against him was known to him only after issuance of notice to him in the execution petition, as he has been residing with his family in the property in question. The revision petitioner learnt that the plaintiffs have been taking steps to take delivery of the property / premises with the help of Police, which forced him to file an application before the Executing Court and the same 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 petitioner and therefore, the application would be ordered to be numbered in the interest of justice.

3. Learned counsel for the respondents/defendants would contend that since the wife and other legal heirs of the 2nd defendant effectively contested the suit and other consequential proceedings, there is no need to hear the petitioner at the stage of execution and moreover, the petitioner and other legal heirs have been residing in the same address, as could be seen from the address furnished by the petitioner in this petition as well as other legal heirs. He would further contend that no fruitful result would be yielded in impleading him as a party to the application and therefore, the order of return passed by the Court below need not be interfered with and this petition is liable to be set aside.

4. Heard the learned counsel on either side and also perused the material documents available on record.

5. A circumspection of the fact would reveal that admittedly, the revision petitioner is a stranger to the suit and he is stated to be residing in the suit property, ordered to be vacated by the Court below. It is seen that though the original plaintiff initially did not succeed in the suit, he plucked the fruits of victory in the appeal and after the full-fledged victory, the plaintiff filed E.P.No.905 of 1996, which ended in favour of the plaintiff and though the revision petitioner has filed the application against the order of the Executing Court, owing to lack of particulars regarding legal heirship of 2nd defendant, the application was refused to be entertained.

6. It is pertinent to mention here that the revision petitioner claims that he is the actual legal heir of the 2nd defendant, thereby created a cloud in the array of legal heirs. It is submitted that 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 petitioner that in the event of the Execution Application not numbered and heard on merits, it will have a serious repercussion for him to move further, as he is stated to be living in the property sought to be evicted. 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.

7. In the result,

(a) the Civil Revision Petition is allowed;

(b) the District Munsif, Palani is directed to number the Execution Application in E.A.SR.No.3696 of 2016 in E.P.No.905 of 1996 in O.S.No.353 of 1979, if it is otherwise in order within a period of two weeks from the date of receipt of a copy of this order.

(c) on numbering the application, the learned Executing Court is directed to issue notice to all the connected parties and thereafter, dispose of the application within a period of one month from the date of issuance of notice to parties.

No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To:

1. The District Munsif,
Palani.
2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai. **(2 copies)**
3. The Record Keeper, E.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.T.Lenin Kumar, Advocate, SR.No.69808

+1CC to M/s.T.A.Ebenezer, Advocate, SR.No. 69815

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