



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.12.2017
Pronounced on : 29.01.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(NPD) (MD)No.2089 of 2016
and CMP(MD)Nos.9749 of 2016 and 1521 of 2017

R.Sundaraj .. Petitioner/Petitioner/Obstructor/
3rd Party
Vs.

1.Arulmigu Sonal Poosari Kovil Private Kovil,
Through R.S.Mani
S/o Madalaimuthu Konar1st Respondent/1st Respondent/
Petitioner/Plaintiff

2.S.Kandasamy

3.S.Seenivasan ... Respondents 2 &3/Respondents/
Respondents/Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order made in E.A.No.48 of 2015 in E.P.No.30 of 2014 in O.S.No.167 of 2010 on the file of V Additional District Judge, Madurai dated 31.08.2016.

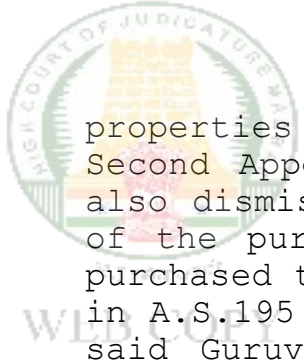
For Petitioner : Mr. M.Suresh Kumar
For R1 : Mr.M.Thirunavukarasau
For R2 : Mr.M.V.Venkataseshan

O R D E R

This Civil Revision Petition has been filed to set aside the order dated 31.08.2016, passed in E.A.No.48 of 2015 in E.P.No.30 of 2014 in O.S.No.167 of 2010 on the file of the V Additional District Judge, Madurai.

2.The brief facts, which are relevant to this case, are as follows:

2.i) The plaintiff in O.S.No.167 of 2010 is a private temple. Initially, one R.S.Mani and some others filed another suit in O.S.No.505 of 1975 on the file of the District Munsif, Madurai against one Guruvammal and her alienates including one Sankaralingam Naidu, the father of the defendants, for declaration that the alienations were void. The same was transferred as O.S. 249 of 1980 to the file of the District Munsif, Madurai Taluk, The plaintiff in the present suit in O.S.No.167 of 2010 was one of the plaintiffs in the earlier suit. The earlier suit was dismissed and on appeal, the court has held that the defendant namely, Guruvammal had only life estate in the properties and she had no right to alienate the



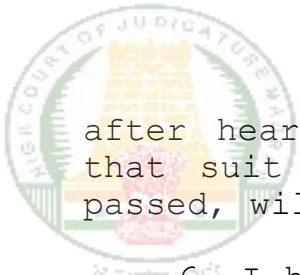
properties beyond her life time to the detriment of the temple. The Second Appeal in S.A.No.196 of 1999 filed before this Court was also dismissed. The defendants' father Sankaralingam Naidu was one of the purchasers of the properties belonging to the temple. He purchased the suit properties of the temple after disposal of appeal in A.S.195 of 1999 from the said Guruvammal. The alienation by the said Guruvammal was void. The plaintiff is entitled to recover possession. The defendants are the sons of the said Sankaralingam Naidu. Hence, the plaintiff repeatedly demanded to surrender possession, the defendants refused to vacate the suit properties. Hence, the present suit in in O.S.No.167 of 2010 is filed.

2.ii) In O.S.167 of 2010 after trial, the trial court set-aside the sale deed executed by Guruvammal and held that the defendants in that suit have no right to possess the petition schedule property and ordered the defendants to give possession to the plaintiff. After Execution Petition in E.P.No.30 of 2014 was filed, the Petitioner/Obstructor has filed an Obstruction Petition in E.A.No.48 of 2015. The said application was allowed in part by the Executing Court. Against which the petitioner/ Obstructor is before this Court challenging the said order.

3. The learned counsel appearing for the petitioner/Obstructor has attacked the order of the Executing Court on three specific grounds. The first ground is that the Executing Court, after giving the finding that the obstruction petitioner is a Pangali, had rejected the Obstruction Petition, which is contrary to the facts and law. The second ground is that the plaintiff/first respondent has admitted in his cross examination that the obstruction petitioner is a Pangali and therefore, the finding to the effect that the petitioner to file a separate suit is erroneous, which would lead to multiplicity of proceedings. The third ground is that the petition filed under Order 21 Rule 97 C.P.C has to be heard and decided in the manner of deciding the suit, in terms of Order 21 Rule 101 C.P.C and in absence of following the said procedure, the order of the Executing Court is not sustainable and he prays for setting aside the same.

4. Learned counsel for the first respondent/plaintiff would vehemently argue that the Obstruction Petitioner has no right over the petition schedule property or he is not in possession of the property and as a third party, he is claiming right, without any specific plea. Adding further, he would submit that the court has declared the possession of the defendants as illegal and therefore, Obstruction Petitioner has no right over the property and he prays for dismissal of this Revision.

5. Learned counsel for the 2nd respondent/2nd defendant has submitted that his father has purchased the schedule property in auction sale and the Obstruction Petitioner is not entitled to the scheduled property and the order passed by the Executing Court does not warrant interference by this Court. During his argument, the learned counsel for the second respondent has specifically represented that one another suit was filed for declaration and



after hearing both sides, the trial court has reserved orders in that suit and according to him, the order, which is yet to be passed, will have a bearing in Second Appeal No.196 of 2017.

6. I have given my anxious attention to the submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and the learned counsel appearing for the second respondent. I have carefully perused the materials placed on record.

7. It is useful to extract the relevant portion of the impugned order, which reads thus:

"On considering the above said facts and circumstances, E.A is allowed in part making it clear that the execution of the decree shall not affect the right of the claim petitioner over the petition schedule property. In other words the decree sought to be executed is a decree directing the respondents 2 and 3/ defendants to hand over the possession of the property to the plaintiff in a representative capacity as a worshipper and Pangali. As I have already entered into a finding that whether the decree holder/plaintiff is a Pangali or not is to be decided by the competent Court in a separate suit".

8. Perusal of record would clearly show that the right of the Obstruction Petitioner over the suit schedule property has to be decided in a separate suit. The first respondent/plaintiff is always entitled to get a decree in a representative capacity as a worshipper from the second and third defendants. The execution of the present decree will not in any way affect the right. Therefore, in my considered opinion, the order dated 31.08.2016 passed in E.A.No.48 of 2015 in E.P.No.30 of 2014 in O.S.No.167 of 2010 by the learned V Additional District Judge, Madurai is well founded, which does not warrant interference by this Court.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected CMP(MD)Nos.9749 of 2016 and 1521 of 2017 are closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To,
The V Additional District Judge, Madurai
+One cc to Mr.M.V.Venkataseshan, Advocate, SR.No.44420
+One cc to Mr.M.Thirunavukkarasu, Advocate, SR.No.44366

CM

RL/4C/3P/SKN/RSK/SAR1/2/2/2018
<https://hcservices.ecourts.gov.in/hcservices/>

CRP(NPD) (MD)No.2089 of 2016
and CMP(MD)Nos.9749 of 2016 and 1521 of 2017

29.01.2018