

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

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THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

C.R.P.(PD).No.3875 of 2013

and

M.P.No.1 of 2013

Senniammal

...Petitioner

Vs.

1.Rasappan

2.Marappan

3.The District Collector,
Office of the District Collector,
Erode District.

4.The Revenue Divisional Officer,
Gobichettipalayam,
Erode District.

5.The Thasildar,
Taluk Office, Gobichettipalayam,
Erode District.

6.The Village Administrative Officer,
Karattupalayam Village,
Gobi Taluk, Erode District.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.08.2013 made in I.A.No.852 of 2012 in O.S.No.246 of 2008 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.V.P.Karthikeyan

For Respondents : No appearance

ORDER

The Civil Revision Petition has been filed against the order of the trial Court dated 22.08.2013, staying the suit in O.S.No.246 of 2008, on the ground that though another suit in O.S.No.293 of 2008 was ordered to be tried along with this suit, jointly and the same was dismissed for default and yet to be restored to file and hence, further proceedings in O.S.No.246 of 2008 cannot be stayed.

2. Heard the learned counsel appearing for the petitioner. Despite the service of notice on the respondents and their names having been printed in the cause list, there is no appearance either in person or through their learned counsel.

3. According to the learned counsel for the revision petitioner, that the suit in O.S.No.293 of 2008, which was dismissed for default on 26.3.2012, has not been restored to file so far and hence, the order of the trial Court staying further proceedings in O.S.No.246 of 2008 is not sustainable in law.

4. It is to be noted that O.S.No.293 of 2008 has been filed for bare injunction. It appears that O.S.No.246/2008 has been filed in respect of the same subject matter. In the meanwhile, an application in I.A.No.1501 of 2011 was filed to try both the suits jointly and the same was allowed on 25.11.2011. In the meanwhile, the suit in O.S.No.293 of 2008 was dismissed for default on 26.03.2012. Thereafter, an application in I.A.No.852 of 2012 in O.S.No.246 of 2008, has been filed to stay the proceedings in subsequent suit in O.S.No.246 of 2008 till the restoration of the earlier suit in O.S.No.293 of 2008.

5. I am of the view that the trial Court cannot keep quiet till the earlier suit in O.S.No.293 of 2008, which was dismissed for default, is restored to file, so as to try along with the subsequent suit in O.S.No.246 of 2008. Such an approach adopted by the trial Court is not warranted, as no suit was pending before the trial Court at the time.

6. The trial Court has not even ordered notice in the earlier suit, which was dismissed for default and was not restored to file till 22.08.2013, the date on which, the proceedings of the subsequent suit was stayed. The trial Court mechanically passed such order and the learned Judge has not exercised his judicial mind properly.

7. In such view of the matter, the order of the trial Court dated 22.08.2013 is set aside. The trial Court is directed to dispose of the suit in O.S.No.246 of 2008, within a period of two months. The Civil Revision Petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.03.2019

Internet : Yes / No
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To

- 1.The District Munsif Court,
Gobichettipalayam.
- 2.The District Collector,
Office of the District Collector,
Erode District.
- 3.The Revenue Divisional Officer,
Gobichettipalayam,
Erode District.
- 4.The Thasildar,
Taluk Office, Gobichettipalayam,
Erode District.
- 5.The Village Administrative Officer,
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N.SATHISH KUMAR, J.

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