

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

C O R A M

THE HON'BLE **Mr.JUSTICE ABDUL QUDDHOSE**

C.R.P.(NPD) No.3972 of 2014 &
M.P.No.1 of 2014

1.A.Velusamy
2.A.Karuppanan
3.Alamelu

... Petitioners

Vs.

1.Appusamy
2.Ramasamy
3.Kuppusamy
4.Papathi
5.The District Collector,
District Collector Office,
Gobichettipalayam Taluk.
6.The Tahsildar,
Gobichettipalayam Taluk Office,
Gobichettipalayam Taluk.
7.A.Shanmugam
8.Thavasiammal
9.Thangamani
10.Mahindran
11.TamilSelvi
12.Ramasamy

... Respondents

(The respondents 5 to 11 are
set ex parte before the trial
court. Hence, notice to the
respondents 5 to 11 may be
dispensed with.)

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 08.08.2014 made in I.A.No.576 of 2013 in O.S.No.127of 1995 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioners ... Mr.Guruprasad

For Respondents 2 to 4... Mr.R.T.Doraisamy

For Respondent 12 ... No appearance

ORDER

The instant civil revision petition has been filed challenging the order dated 08.08.2014 passed by the District Munsif Court, Gobichettipalayam in I.A.No.576 of 2013 in O.S.No.127of 1995.

Brief facts leading to the filing of the instant revision under Section 115 of the code of civil procedure:

2. The petitioners who are the defendants 4, 5 & 8 are the legal representatives of the third defendant viz., Ammasai Gounder in the suit O.S.No.127 of 1995 filed by one Ponnaiya gounder. The respondents 1 to 4 are the legal representatives of the deceased

Ponnaiya Gounder. The said suit was filed for declaration and mandatory injunction in respect of the suit schedule property. In the suit, written statement as well as additional written statement has been filed by the petitioners' father, deceased Ammasai Gounder, who was the third defendant. Issues have also been framed by the Trial Court. Since batta was not paid by the petitioners in I.A.No.738 of 2008 by the legal representatives of the deceased Ponnaiya gounder who filed the said application to bring them on record, I.A.No.738 of 2008 was dismissed for default on 19.03.2009 and consequently, the suit was also dismissed for default. I.A.No.576 of 2013 was filed by the respondents to condone the delay of 988 days in filing an application to restore I.A.No.738 of 2008 which was dismissed for default on 19.03.2009. The reason given by the respondents 1 to 4 in the affidavit filed in support of I.A.No.576 of 2013 is that if the suit is not restored to file, it will cause prejudice and hardship to the respondents 1 to 4, since the suit has been filed for declaration and mandatory injunction.

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3. A counter statement was also filed by the petitioners in I.A.No.576 of 2013 denying the allegations contained in the affidavit

filed in support of I.A.No.576 of 2013. By order dated 08.08.2014, the Trial Court allowed I.A.No.576 of 2013. Aggrieved by the same, the petitioners who are the defendants 4, 5 & 8 have preferred this revision.

4. Heard Mr.Guruprasad, learned counsel for the petitioners and Mr.R.T.Doraisamy, learned counsel appearing for the respondents 2 to 4.

Discussion:

5. This Court has perused and examined the impugned order. As seen from the impugned order, the suit has been filed by one Ponnaiya Gounder against the defendants in O.S.no.127 of 1995 for declaration and mandatory injunction in respect of the suit schedule property. As seen from the plaint averments, the respondents 1 to 4 who are the legal representatives of ponnaiya gounder claim ownership of the suit schedule property and therefore, they have sought for cancellation of the patta granted in favour of Ammasai Gounder.

6. The Trial Court under the impugned order has considered the relief sought for by the respondents 1 to 4 in the plaint filed in support of O.S.No.127 of 1995 and only on that score, I.A.No.576 of 2013 has been allowed to enable the respondents to prosecute the suit on merits. The Trial Court has observed that if I.A.No.576 of 2013 is not allowed, it will cause irreparable hardship to the respondents 1 to 4 / plaintiffs. The impugned order was passed as early as on 08.08.2014. Only due to the filing of this revision petition, it is seen that the suit is still pending on the file of the trial court. If not for the filing of this revision, the suit itself by now would have been disposed of. The reason given by the Trial Court for allowing I.A.No.576 of 2013 is a sound one considering the fact that the ownership and possessory rights of the parties over the schedule property are involved. This Court does not find any infirmity in the order of the trial court.

Conclusion:

7. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8. Considering the long pendency of the suit, a direction is given to the Trial Court to dispose of the suit O.S.No.127 of 1995 within a period of three months from the date of receipt of a copy of this order.

06.08.2019

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Index : Yes / No
Internet: Yes/No
Speaking/Non-Speaking orders



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To

The District Munsif Court, Gobichettipalayam



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ABDUL QUDDHOSE. J,

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