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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

C.M.P. (MD) No.2690 of 2019

in

CMA(MD) No.SR11361 of 2019

and

C.M.A. (MD) No.SR11361 of 2019

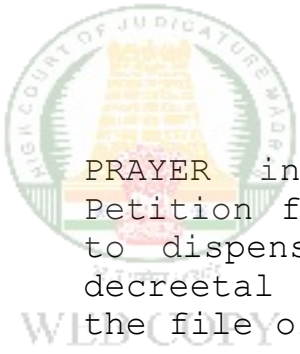
Venkuttusamy

... Petitioner/Appellant

vs.

- 1.Gopalsamy
- 2.Minnalkodi
- 3.J.F.Bakeries and coolers,
a partnership firm
represented by its partner,
Arun Complex,
R.S.Road,
Vaiyajmpatti, Manapparai Taluk,
Tiruchirappalli District.
- 4.The Branch Manager,
Kosamattam Finance Ltd.,
Arun Complex,
R.S.Road,
Vaiyajmpatti, Manapparai Taluk,
Tiruchirappalli District.
- 5.The Branch Manager,
City Union Bank,
Dindigul Road,
Vaiyajmpatti,
Manapparai Taluk,
Tiruchirappalli District.
- 6.The State of Tamilnadu,
represented by its District Collector,
Tiruchirappalli.
- 7.The Tahsildar,
Land Acquisition,
Office at Collectorate,
Tiruchirappalli.
- 8.The Tahsildar,
Manapparai Taluk,
Tiruchirappalli District.

... Respondents/Respondents



PRAYER in C.M.P.(MD) No.2690 of 2019:- Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, to dispense with the production of the certified copy of the decreetal order in indigent O.P.No.3 of 2016 dated 09.11.2018 on the file of the Principal District Judge, Tiruchirappalli.

PRAYER in CMA(MD) No.SR11361 of 2019:- Civil Miscellaneous Appeal filed under Order XXXXIII Rule 1 (a) and Section 104 of the Code of Civil Procedure, to set aside the fair and decreetal order passed in Indigent O.P.No.3 of 2016 dated 09.11.2018 by the Principal District Judge, Tiruchirappalli.

For Petitioner : Mr.R.S.Sivaram

ORDER

The Civil Miscellaneous Petition has been filed to dispense with the production of the certified copy of the order made in indigent O.P.No.3 of 2016 dated 09.11.2018 by the learned Principal District Judge, Tiruchirappalli.

2.C.M.A.(MD) No.SR11361 of 2019 has been filed to set aside the fair and decreetal order passed in Indigent O.P.No.3 of 2016 dated 09.11.2018 by the Principal District Judge, Tiruchirappalli.

3.The learned counsel for the petitioner would submit that in spite of the fact that he has filed a copy application to get a certified copy. He was provided only the fair order and he has yet to receive the decreetal order dated 09.11.2018. The petitioner has preferred the present miscellaneous petition for the relief as stated above. Further, the petitioner's counsel would submit that the grounds of appeal has to be taken as part and on perusal of the affidavit and grounds, the same has also been perused.

4.The petitioner contended that only because of the urgency in preferring the said appeal, the production of certified copy of the decreetal order has to be dispensed with. Since the petitioner provided only the fair order, the said appeal has been filed to set aside the fair and decreetal order passed in Indigent O.P.No.3 of 2016 dated 09.11.2018 by the learned Principal District Judge, Tiruchirappalli.

5.The petitioner has filed the said O.P., for declaring himself as indigent person and to file a suit without paying the deficit Court fee. In the said O.P., the petitioner contended that he purchased the suit property from the father of the first defendant on 18.06.1962 through a registered instrument. The first respondent's brother is the son-in-law of the petitioner. The father of the first respondent has not raised his little finger till his death and there was no question of mortgage arises



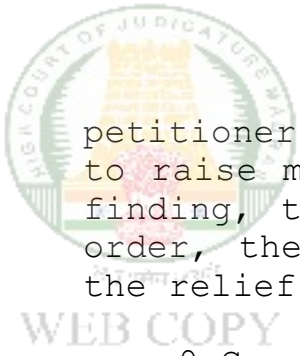
since the sale deed has been duly registered according to law, whereas, the revenue entries were not made in favour of the petitioner. Taking undue advantage of the same, the first respondent has changed the revenue records in his name and has executed a settlement deed in favour of his wife.

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6.The first respondent joined hands with his wife and his sister and attempting to grab the suit property from the petitioner and they are entered into rental agreement with the defendants 3 and 4. The fifth respondent has also issued a loan to the tune of Rs.20,00,000/- to the respondents 1 and 2 and the said facts came to the petitioner, when he has taken steps to settle the property to his daughter. After knowing the said fact, the property has been mortgaged to the fifth respondent. Thereafter, he has preferred the appeal before the Registrar, Tiruchirappalli and the same is pending. Further, the petitioner has executed an unregistered Will dated 21.11.2015 in favour of his daughter and he has no source of income to pay the deficit the Court fee. Hence, the petitioner has preferred the said suit for declaration, recovery of possession, cancellation of said patta and any transactions thereafter. Since the petitioner has no source of income to pay the deficit Court fee, he has filed a petition to permit him as an indigent person.

7.The first respondent filed a counter statement and the same has been adopted by the respondents 2 to 5. The main contention of the said counter is that the petitioner has many source of income from agricultural activities lands in patta No.832 in S.F.No.148-3A measuring 0.22.5 hec, 148/5A measuring 10 cents and in S.F.No.148/8E measuring 0.08 cents, at Vaiyampatti Village and also having lands at South Mugavanoor Village in S.F.No.948/4 measuring 0.42.50 hec, and in S.F.No.926/1A measuring 2.40.50 hec 948/2 measuring 1.08.00 hec and having a rice mill under the style of Venkateswara Rice Mill in S.F.No.148-3B2 and further, the petitioner has executed a registered sale deed dated 28.01.2016 and he has also entered registered sale agreement with Palaniappan in respect of one house with one shop for a sale price of Rs.4,00,000/- and has also entered another registered sale agreement dated 04.04.2016 with one Ramasamy for Rs.12,00,000/-. Hence, the first defendant seeks for dismissal of the said petition.

8.The trial Court has clearly observed that the petitioner has having some item of properties in his possession and from the evidence of R.W1 and documents, it is seen that the petitioner has sufficient properties to raise means to pay the Court fee due on the plaint. Hence, the petitioner, who had admitted the sale agreement while examining him before the Court below, denied all the facts in the petition as well as in the chief affidavit. Accordingly, the trial Court came to the conclusion that the



petitioner is having the ability and capacity in ordinary course to raise money to pay the Court fee and on the basis of the said finding, the said petition was dismissed. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed for the relief as stated above.

9. Considering the facts and circumstances of the case, this Court finds that the trial Court has also given sufficient time to the petitioner to pay the necessary Court fee till 17.12.2018, whereas, the petitioner has not complied with the said order and in spite of the order passed on 09.11.2018, the petitioner has preferred the present appeal, which does not warrant any interference of this Court.

10. This Civil Miscellaneous Petition is dismissed accordingly. Consequently, connected C.M.A. (MD) No. SR11361 of 2019 is also rejected at the SR stage itself. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal District Judge,
Tiruchirappalli.

2. The District Collector,
Tiruchirappalli

3. The Tahsildar,
Land Acquisition,
Office at Collectorate,
Tiruchirappalli

4. The Tahsildar
Manapparai Taluk,
Tiruchirappalli District

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C.M.P. (MD) No. 2690 of 2019
in

CMA (MD) No. SR11361 of 2019

and

C.M.A. (MD) No. SR11361 of 2019

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