



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2019

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WEB COPY

THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P. (PD) (MD)No.2386 of 2011

and

M.P(MD) No.1 of 2011

The Church of South India Trust Association,
Tiruchirappalli Thanjavur Diocese,
Rep.by its Power Agents
1.Lt.Col.S.S.Immanuel, Diocesan Treasurer
2.S.Rajendran, Lay Secretary,
Diocesan Office, Puthur, Trichy-17.

... Petitioner

Vs.

M.Ramesh

... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to strike of the application in E.A.No.38 of 2011 in E.P.No.9 of 2010 in O.S.No.10 of 2009 on the file of the I Additional District Judge, Trichirappalli.

For Petitioner : Mr.R.Devaraj

For Respondent : Mr.K.S.Sankar Murali

ORDER

The plaintiff is the revision petitioner before this Court. The revision petition is filed under Article 227 of the Constitution of India to strike off the Section 47 application moved by the defendant in E.A.No.38 of 2011 in E.P.No.9 of 2010, which is the execution petition by the revision petitioner herein to execute the ex-parte decree in O.S.No.10 of 2009 on the file of the District Judge, Triuchirappalli.

2.The plaintiff / revision petitioner herein had filed a suit against the respondent herein for granting mandatory injunction directing the defendant to remove the B-Schedule property failing which, granting liberty to the plaintiff to have the same removed through process of court at the cost of the defendant and directing the defendant to deliver possession of the suit C-Schedule property to the plaintiff after removal of the existing superstructure failing which, granting liberty to the plaintiff to



injunction directing the defendant to remove the existing constructions in the suit C-Schedule property failing which, granting liberty to the plaintiff to have the same removed through process of court at the cost of the defendant and directing the defendant to pay the past mense profits in respect of the C-Schedule property from 16.06.2007 till the date of the suit with subsequent interest to be determined by separate proceedings under Order 20 Rule 12 CPC and directing the defendant to pay the future mense profits in respect of the C-Schedule property from the date of the suit till delivery of possession of the same to be determined by separate proceedings under Order 20 Rule 12 CPC.

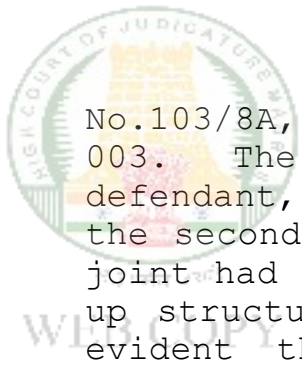
3.An ex-parte decree came to be passed on 06.01.2010 by the I Additional District Judge,Tiruchirappalli. Thereafter, it is seen that the revision petitioner had filed an application in E.P.No.9 of 2010 on the file of the I Additional District Judge, Tiruchi seeking execution of the ex-parte decree against the respondent. Notice has been ordered to the respondent and it is seen that the notice was not delivered and when the possession was attempted to be taken, the respondent herein has come forward to file the Section 47 application, in which the respondent has stated that no notice has been issued to him in the suit since the address that has been given in the suit is not the address of the respondent / defendant and that it was an address where he had been living earlier. He would also state that notice has not been served on the premises which is the subject matter of the suit of which the respondent is in possession. As soon as the revision petitioner has received notice in the said application, the revision petitioner have come forward with this civil revision petition.

4.The learned counsel appearing for the petitioner would argue that the petitioner had in fact taken out paper publication and thereafter, since there was no appearance, the ex-parte decree came to be passed.

5.The learned counsel for the respondent would argue that there is no explanation as to why the notice has not been served to the premises, in which the petitioner is carrying on his business and which is the subject matter of the suit. He would submit that he had moved an application for setting aside the ex-parte decree, with an application to condone the delay and the delay has been condoned. This order has also been challenged by the plaintiff.

6.Heard the learned counsel on either side and perused the papers.

7.The address of the defendant in the plaint has been given as



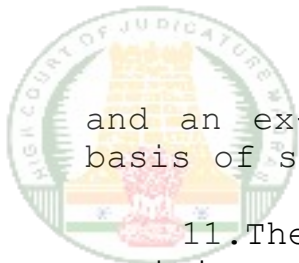
No.103/8A, Yamuna Block, Salai Road, Woraiyur, Tiruchirapalli-620 003. The entire plaint has been filed on the ground that the defendant, who was let into possession of shop nos.1,2,3,4 & 5 in the second floor in 'A' schedule property for running a fast food joint had trespassed into the other portions and high handedly put up structures. Therefore, from the reading of the plaint, it is evident that the plaintiff should have taken notice to the address, in which, the respondent is in occupation/carrying on business. However notice has been taken to an address where the respondent was originally residing.

8.It is also informed by the learned counsel for the respondent that notice has been taken and the same has been returned with an endorsement that 'left-'no such addressee'. Thereafter, paper publication has been taken immediately to the very same address that has been given in the plaint. Order V Rule 17 of C.P.C., provides the procedure, which has to followed when the defendant refuses to accept service or cannot be found. Order V Rule 17 of C.P.C., reads as follows:

"17.Procedure when defendant refuses to accept service, or cannot be found- Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant (who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time) and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed."

9.In fact, Order V Rule 19 of C.P.C., provides that the Serving Officer can also be examined on oath with reference to the service. Court should order substituted service only if the conditions set out in Order V Rule 20(1) of C.P.C., exists.

10.Admittedly, such a situation does not arise in the instant case. The service has been taken to an address, which is not an address of the defendant and a fraud has been played on the Court



and an ex-parte decree has been snatched from the Court on the basis of such fraud.

11. Therefore, in the light of the above, the revision petitioner cannot have the Section 47 application, now pending before the Court below in E.A.No.38 of 2011 in E.P.No.9 of 2010 in O.S.No.10 of 2009 struck off. The Civil Revision Petition, therefore, stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar (CS)

gns

To

The I Additional District Judge,
Trichirappalli.

+1 CC to M/s.K.S.SANKAR MURALI, Advocate (SR-91245[F] dated 04/10/2019)

C.R.P. (PD) (MD)No.2386 of 2011
01.10.2019

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