



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2019

CORAM

WEB COPY

THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (NPD) (MD) No.534 of 2019

and

C.M.P. (MD) No.2656 of 2019

Ganesan

:Petitioner/ Petitioner/
2nd Defendant

Vs.

1.Muthammal
2.Madasamy
3.Arunachalavadivu
4.Rajammal
5.Gunaseelan
6.Veluchamy
7.Narayanaperumal
8.Arunachalavadivu
9.Madasamy
10.Sudalai
11.R.Sadaiyappan
12.P.Muthu
13.R.Arunachalavadivammal

:Respondents/Respondents/
Plaintiffs/Defendants

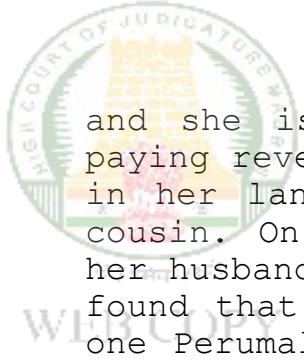
Prayer:- Civil Revision Petition is filed, under Section 227 of the Civil Procedure Code, to set aside the fair and decreetal order dated 29.01.2019 in I.A.No.156 of 2018 in O.S.No.110 of 1996 on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioners : Mr.G.Prabhu Rajadurai

ORDER

This civil revision petition has been preferred by the petitioner against the fair and decreetal order passed in I.A.No.156 of 2018 in O.S.No.110 of 1996 on the file of the Principal District Munsif Court, Thoothukudi.

2.The suit in O.S.No.110 of 1996 was filed by the plaintiff against 13 defendants by claiming that on 18.04.2008 Thirumathi S.Nachiar and her husband as power agent sold the schedule property to the plaintiff and executed registered sale deed. After purchase, the plaintiff got patta for the said property



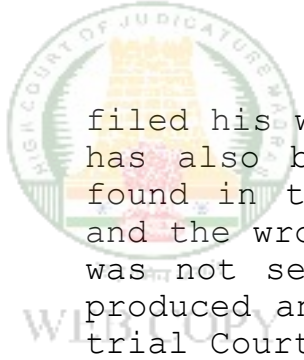
and she is in possession and enjoyment of the said property by paying revenue tax. The plaintiff contended that she has made fence in her land and the property was looked after by the plaintiff's cousin. On 24.01.1996, when the plaintiff came to Tuticorin with her husband and went to the property, at that time, the plaintiff found that the defendants 1 to 10 have put up huts and house and one Perumal sold the property to them. Hence, the plaintiff filed the suit for declaration of his title to the property and for recovery of possession with past profit and future mesne profits.

3. When the suit came up for trial, the plaintiff was examined before the trial Court and a counsel was also represented on behalf of defendants and reported that he has no instructions from their clients. The defendants was not examined before the trial Court. Hence, the trial Court has passed the ex-parte order based on the evidence of the plaintiff and also perusing the documents. To set aside the same, he filed an Execution Petition in E.P.No.139 of 2008 in O.S.No.110 of 1996 for delivery of possession of the suit property. There was a delay in filing the same. He filed I.A.No.156 of 2017 to condone the delay of 6467 days in filing the said application.

4.The petitioner herein as second defendant in I.A.No.156 of 2017 contended that the plaintiff/respondent has not given proper address of the defendants and has given false address. Therefore, the petitioner herein did not receive any summons and further, paper publication has been passed. Hence, a decree was passed against him and he suffered an exparte. Even in the execution petition in E.P.No.139 of 2008, a wrong address has been given by the decree holder and that was also not received by him in the said execution petition. On 12.08.2017, the Commissioner visited the suit property and measured the same. Only then, the petitioner came to know that based on the wrong address furnished by the decree holder, an exparte decree was passed and based on the same, E.P. has been filed against him.

5.The respondents in the counter statement contended that in the said suit, the plaintiff was examined before the Court and when the case was posted for examination, the counsel appearing for the said defendants appeared and reported that he has got no instructions from the defendants. The petitioner also appeared before the Court and filed his vakalat. Hence, the trial Court verified the same and also identified the attitude of the petitioner that the petitioner signed as a witness in the said petition and only to drag on the proceedings, the petitioner filed the petition.

6.The trial Court discussed everything and passed an order that the petitioner was also examined before the trial Court and no document has been filed by him with regard to wrong address given by the decree holder and no document has been filed with regard to non appearance. It is also observed by the trial Court in the said suit that the petitioner who is the second defendant appeared and



filed his written statement and the issues were framed and the trial has also been commenced. The trial Court observed the signature found in the affidavit as well as the written statements are same and the wrong address has been furnished by the decree holder and it was not served on him. Further, the petitioner/defendant has not produced any reliable documents before the trial Court. Hence, the trial Court dismissed the said petition.

7. In view of the above, the order passed by the trial Court does not require any interference, since the petitioner has also signed in the delivery report and Amin handed over part of the plaint schedule property to the plaintiff on 09.03.2018. Hence, this civil revision petition is dismissed. The petitioner shall pay a sum of Rs.1000/-, as costs, to the credit of the Chief Justice Relief Fund (payable in Accounts Section of the High Court Registry, Madurai Bench), within a period of two week from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writ)

// True Copy //

Sub Assistant Registrar (CS-)

To

The Principal District Munsif, Thoothukudi.

Copy To:

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court, Madurai.

+1. C.C. to Mr.G.Prabhu Rajadurai Advocate SR.No.59787

C.R.P. (NPD) (MD) No.534 of 2019

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