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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.02.2019

DELIVERED ON : 03.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1948 of 2015

and

M.P.No.1 of 2015

and

C.M.P. (MD) No.9917 of 2016

V.Shanmugam

...Petitioner/Petitioner/
First Defendant

Vs.

1.R.Pandiammal
K.Muthupillai (Died)
2.K.Pandi
3.K.Valli

... Respondent/1st Respondent/Plaintiff

... Respondents/Respondents 2 to 4/
Defendant 2 to 4

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 08.07.2015 made in I.A.No.4 of 2013 in O.S.No.70 of 2012 on the file of the District Munsif Court, Mudukulathoor.

For Petitioner	: Mr.H.Thayumanaswamy
For 1 st Respondent	: Mr.K.C.Ramalingam
For Respondents 2 and 3	: Mr.D.Senthil

ORDER

Heard Mr.H.Thayumanaswamy, learned counsel appearing for the petitioner, Mr.D.Senthil, learned counsel appearing for the respondents 2 and 3 and Mr..K.C.Ramalingam, learned counsel appearing for the first respondent.

2.This Civil Revision Petition has been filed against the order made in I.A.No.4 of 2013 in O.S.No.70 of 2012 dated 08.07.2015 on the file of the District Munsif Court, Mudukulathoor.



3.The petitioner herein is the first defendant, the first respondent herein is the plaintiff and the respondents 2 and 3 herein are the defendants 3 and 4 in the suit. The first respondent herein has filed a suit in O.S.No.70 of 2012 for a prayer of declaring the decree passed in O.S.No.28 of 2004 as null and void. In that suit, the petitioner herein has filed a petition in I.A.No.4 of 2013 for rejection of the suit in O.S.No.70 of 2012 stating that O.S.No.28 of 2004 is still pending and and that petition was dismissed by the trial Court. Against that order, this revision petition is filed.

4.On the side of the petitioner, it is stated that the suit in O.S.No.28 of 2004 was filed and after the completion of trial, the Judgment was passed in favour of the petitioner on 03.09.2010 and the appeal in A.S.No.9 of 2001 was filed and the case was remitted back for trial before the learned District Munsif and the case is still pending before the Court. Though the first respondent is aware of the pendency of the case, the petitioner has filed a suit to declare the decree passed in O.S.No.28 of 2004 as null and void and that suit is to be rejected.

5.On the side of the respondents, it is stated that on 06.01.1997, the first respondent and her mother filed a suit in O.S.No.3 of 1997 before the learned District Munsif, Mudukulathur and this petitioner was the first defendant in that suit and the father of the defendants 2 to 4, one Karmeka Thevar was the sixth defendant in that suit and that an exparte decree was passed on 23.11.2005 and that the first respondent filed a writ petition in W.P.(MD)No.13462 of 2011 for issuance of patta and the respondents are not a party in O.S.No.28 of 2004 and that this petition is filed suppressing W.P.(MD)No.13462 of 2011 and the exparte decree passed in O.S.No.3 of 1997 and prayed the petition to be dismissed.

6.The petitioner filed a petition to reject the suit in O.S.No.70 of 2012. O.S.No.70 of 2012 was filed to declare the decree in O.S.No.28 of 2004 as null and void. The contention of the petitioner is that already the decree was set aside by the Appellate Court and the matter was remitted back to the trial Court and the case is still pending. The contention of the respondent is that even after the remand, O.S.No.28 of 2004 was disposed of.

7.A perusal of records reveals that the petitioner himself has filed Ex.P1 stating that O.S.No.28 of 2004 was disposed of on 03.09.2011. The petitioner himself has filed a copy of the Judgment dated 23.09.2014 passed in O.S.No.28 of 2004 as Ex.P3. It is clear that O.S.No.28 of 2004 was again disposed of on 23.09.2014. Hence, the contention of the petitioner is not maintainable

8.In the above circumstances, there is nothing sufficient enough to interfere in the order by the lower Court. This Civil Revision Petition is dismissed by confirming the order passed in



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I.A.No.4 of 2013 in O.S.No.70 of 2012 dated 08.07.2015 on the file of the District Munsif Court, Mudukulathoor. No Costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif, Mudukulathoor.

+1 CC to M/s.D.SENTHIL, Advocate in SR-58764

+1 CC to M/s.H.THAYUMANASWAMY, Advocate in SR-59427

C.R.P. (PD) (MD) No.1948 of 2015
03.04.2019

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