



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP (PD) (MD) Nos.767 to 769 of 2019

and

CMP (MD) No.4694 of 2019

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P.Sathiyamoorthy

... Petitioner in all CRPs.

versus

1. Kasiammal
2. P.Pappammal
3. P.Muniasamy @ Dhinakaran
4. Raja Sulakshana
5. Kovilpitchai

...1 to 4 Respondents in all CRPs
... 5th respondent in
CRP No.769 of 2019

CRP (PD) (MD) No.767 of 2019: Revision Petition filed under Article 227 of Constitution of India against the returned orders dated 09.04.2019 and 30.04.2019 made in E.A.No.Diary No.756 of 2019 in E.P.No.5 of 2011 in O.S.No.246 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Vilathikulam.

CRP (PD) (MD) No.768 of 2019: Revision Petition filed under Article 227 of Constitution of India against the returned orders dated 09.04.2019 and 30.04.2019 made in E.A.No.Diary No.757 of 2019 in E.P.No.5 of 2011 in O.S.No.246 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Vilathikulam.

CRP (PD) (MD) No.769 of 2019: Revision Petition filed under Article 227 of Constitution of India against the returned orders dated 09.04.2019 and 30.04.2019 made in E.A.No.Diary No.758 of 2019 in E.P.No.5 of 2011 in O.S.No.246 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Vilathikulam.

For Petitioner in all CRPs : Mr.G.Ethirajulu
For R5 in all CRPs : Mr.Mohamed Sherfudeen

COMMON ORDER

This Civil Revision Petitions have been filed challenging the returned orders dated 09.04.2019 and 30.04.2019 made in E.A.No.Diary Nos.756 to 758 of 2019 in E.P.No.5 of 2011 in O.S.No.246 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Vilathikulam.

2. It is case of the revision petitioner that he filed three Execution Applications before the District Munsif cum Judicial Magistrate Court, Vilathikulam. One is filed for setting aside the ex parte order dated 16.06.2014 and another one is filed for



condonation of delay of 1718 days in filing the application to set aside the ex parte order dated 16.06.2014 and the last one is filed for setting aside the Sale Deed vide DOC No.398 of 2018 dated 28.02.2018 registered in favour of Mr.P.Kovilpitchai. But, the Court below returned the said applications on 09.04.2019 stating that property was delivered on 07.03.2019 and E.P.No.5 of 2011 was also already terminated and under such circumstances, queried as to how the petitions are maintainable. The revision petitioner herein, by giving the following explanation, resubmitted the application on 24.04.2019:

"E.P.5 of 2011 B-diary shows that sale notice was issued on 13.02.2014 and petitioner filed vakalat through R.Gurusamy Krishnan and paid Rs.43,000/- in E.P.No.01.02.2013, 26.02.2013, 20.03.2014 and 25.08.2014."

But, the Court below, vide order dated 30.04.2019, once again returned the applications stating that the previous return was not properly complied with. Challenging the same, the present revision petitions have been filed.

3. The learned counsel appearing for the revision petitioner submitted that the present applications have been filed for setting aside the ex parte order dated 16.06.2014 along with the delay of 1718 days in filing the application for setting aside the ex parte order dated 16.06.2014 and also for setting aside the Sale Deed dated 28.02.2018 registered in favour of Mr.P.Kovilpitchai. However, the Registry of the Court below returned the said applications stating that the property was delivered on 07.03.2019 and E.P.No.5 of 2011 was already terminated, which are not relevant to the present application. Though the revision petitioner explained the reasons for his non-appearance and also for the delay in filing the said application, the Registry of the Court below, without considering the same, took the role of the Judicial Officer in its hand and returned the application, which is totally unwarranted. Therefore, he prayed for issue appropriate direction.

4. Heard the learned counsel appearing for the revision petitioner.

5. On perusal of application filed by the revision petitioner, it is seen that he explained all the reasons for his non-appearance before the Court below. However, the Registry has returned the application. As per law, only if the petitioner succeeds, then delivery order can be restored. That being the case, the Registry took the role of the Judicial Officer in its hand and returned the application which is totally unwarranted. Further the judicial function cannot be delegated to the Registry. However, the Registry, without giving any opportunity to the petitioner to prove his case, returned the applications. Therefore, this Court is of the view that the return orders dated 09.04.2019 and 30.04.2019 are liable to be set aside. Accordingly, the return orders dated 09.04.2019 and 30.04.2019 are set aside. The Registry of the Court

<https://hccservices.courts.gov.in/hccservices> directed to number the applications without any further



delay and list the matters before the Court below, within a period of one week from the date of receipt of a copy of this order.

6. In the result, the Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif cum Judicial Magistrate Court,
Vilathikulam.

Copy to: The Section Officer,
Current Section,
Madurai Bench of Madras High Court,
Madurai.

+3 CC to M/s.P.ARUN JAYATRAM, Advocate (SR-93763[F] dated 23/10/2019), 93764, 93765

+1cc to Mr.Mohamed Sherfudeen, Advocate, SR No.94372

CRP (PD) (MD) Nos.767 to 769 of 2019
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