



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) (NPD) .No.2545 of 2018

and

C.M.P. (MD) .No.11192 fo 2018

Subramanian

:Petitioner

Vs.

1.Indira Gandhi

2.Soundarajan

3.Poomalai

:Respondents

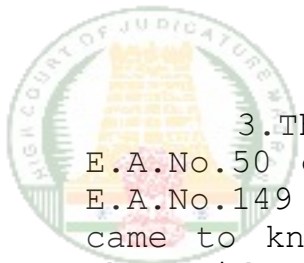
Prayer: The Civil Revision Petition has been filed under Section 115 of Civil Procedure Code to allow the revision and set aside the order dated 24.08.2018 made in E.A.No.130 of 2013 in E.A.No.50 of 2006 in E.P.No.35 of 2006 in O.S.No.117 of 2002 on the file of the Sub Court, Aruppukottai.

For Petitioner : Mr.PT.S.Narendravasan
For R-1 and R-2 : Mr.S.Parthasarthy

ORDER

This Civil Revision Petition has been preferred by the petitioner to set aside the order dated 24.08.2018 made in E.A.No.130 of 2013 in E.A.No.50 of 2006 in E.P.No.35 of 2006 in O.S.No.117 of 2002 on the file of the Sub Court, Aruppukottai.

2.The learned counsel for the petitioner contended that the petitioner filed E.A.50 of 2006. The said petition was filed by the petitioner to dismiss the execution petition filed in E.P.No.35 of 2006 in O.S.No.117 of 2002. Further, he contended that as per the order in E.A.50 of 2006, the paragraph 4(A) was added as per the order in E.A.No.149 of 2009 dated 26.11.2010. The petitioner further contended that the original owner of the property is one Meenakshi has no right in the said property but her son one Poomalai by way of settlement dated 05.10.1988 obtained the property and he entered the sale agreement with one Indra Gandhi and one Soundararajan. After knowing the said fact, the parties Poomalai, Indra Gandhi and Soundararajan are claiming right over the suit property by Meenakshi Ammal. Hence, Meenakshi ammal herself has no right over the said property. The said amendment that was made in E.A.No.50 of 2006 has to be removed.



3.The further contention of the petitioner is that in E.A.No.50 of 2006 para 4(A) was added as per the order passed in E.A.No.149 of 2009 dated 26.11.2010. Subsequently, the petitioner came to know that Meenakshi ammal has no right over the property. The said amendment that is including paragraph 4(A) was found to be unnecessary and improper. Hence, the petitioner sought for removal of the said amendment made in E.A.No.50 of 2006.

4.For which, the respondent in their counter statement contended that the said amendment sought by the petitioner to defeat the right of the respondents Indra Gandhi and Soundararajan. If the said Meenakshi has no right over the property then the petitioner himself has no right over the said property. After identifying the same, he came with another petition to remove those amendments made in E.A.No.149 of 2006. Hence, the respondent sought for dismissal of the said petition and the Executing Court has also analyzed the facts and contentions raised by both the parties and the trial Court also discussed the issue regarding the amendment that was sought by the petitioner in E.A.No.149 of 2006 and after making the amendments in E.A.No.50 of 2006, once again the petitioner filed E.A.No.130 of 2013 for removal of the same and the trial Court has also observed the issue and the relief sought by the respondent in E.P has discussed in detail and allowed the petition.

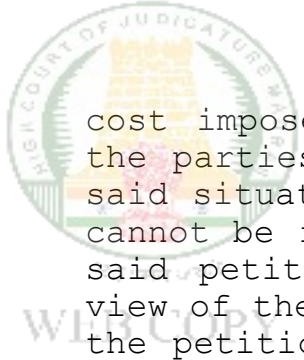
5.The trial Court has found that the petition filed by the petitioner is vexatious one and ordered the petitioner to pay a cost of Rs.20,000/- to the respondents and further cost of Rs.20,000/- to be paid to the District Mediation Centre, Srivilliputhur. Hence, E.A.No.130 of 2013 filed by the petitioner was dismissed with heavy costs. Aggrieved against the said order, the petitioner has preferred this civil revision petition.

6.Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

7.In view of the amendment application that was filed by the petitioner to make such amendment in E.A.No.50 of 2006, the said petition was allowed and his contention is that after he came to know that those amendments are not necessary, he has filed this petition.

8.The learned counsel for the respondents vehemently objected the petitioner's case and stated that he entered the sale transaction with the respondents Indra Gandhi and Soundararajan once again he himself is making a contradiction averment by stating that the said Meenakshi Ammal has no right over the property and the said fact also discussed by the Trial Court and the attitude of the petitioner was noted and the said petition was dismissed with the heavy cost.

9.On hearing both sides and also observing the facts and circumstances of the case that prevailing in the suit at present the



cost imposed by the Executing Court is highly excessive for which the parties or the counsels cannot bear the same. Considering the said situation and the inconvenience caused to the petitioner, they cannot be forced by way of imposing heavy cost and dismissal of the said petition itself is sufficient to proceed further. Hence, in view of the modification, the cost imposed for the said dismissal of the petition alone is set aside and the order passed in E.A.No.130 of 2013 is confirmed and the civil revision petition is partly allowed. No costs. The Executing Court is directed to dispose of E.A.No.50 of 2006 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected C.M.P.(MD).No.11192 of 2018 is closed.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To
The Sub Court,
Aruppukottai.

+1 CC to Mr.PT.S.NARENDRAVASAN, Advocate SR-54090.
+1 CC to Mr.S.PARTHASARATHY, Advocate SR-54592.

Order Made in

**C.R.P. (MD) (NPD) .No.2545 of 2018
and**

C.M.P. (MD) .No.11192 fo 2018

Dated:- 14.03.2019

CS: 17/07/2019 3P 4C