



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.08.2019
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.1408 of 2019
and
C.M.P. (MD) .No.7473 of 2019

K.Periyasamy ... Petitioner/Petitioner/Respondent No.4/
6th defendant
Vs.

G.Padmavathi ... Respondent/ Respondent/Petitioner/
Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the non-speaking order of return in E.A.No.unnumbered/2019, dated 15.07.2019, and direct the learned District Munsif Court, Thirumangalam, to number the E.A. In E.A.SR.No.2704 of 2019.

For petitioner : Mr.J.Jeyakumaran

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the written endorsement made by the Court below, dated 15.07.2019, in unnumbered E.A.No.nil of 2019.

2. It is seen that the respondent herein as plaintiff has filed the suit in O.S.No.217 of 2003 for partition and the same was decreed on 12.10.2009. Aggrieved by the judgment and decree passed in the suit, the petitioner herein as appellant has filed the appeal and the same was dismissed by the first appellate Court on 22.02.2017. In the meantime, the respondent herein filed an application in I.A.No.1079 of 2013 for final decree and the same was allowed on 28.06.2018. Thereafter, the respondent herein has filed an execution petition in E.P.No.53 of 2018 and the same was allowed in ex parte on 14.02.2019, due to non appearance of the petitioner herein. For filing a petition to set aside the ex parte order dated 14.02.2019, there occurred a delay of 10 days. Hence, the petitioner herein filed an execution application for condoning the delay of 10 days in filing a petition to set aside the ex parte order dated 14.02.2019. The Court below has returned the said application with an endorsement that the execution petition itself has been terminated as delivery made and therefore, the execution application presented by him cannot be entertained. Challenging the said



endorsement, the petitioner has filed this revision petition.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. According to the petitioner, the summon has not been served to the petitioner in the execution petition and therefore, he could not appear before the Court below and therefore, the ex parte order passed in the execution petition is liable to be set aside. Admittedly, the petitioner is the 6th defendant in the suit. A perusal of page number 33 of the typed set of papers shows that in the execution petition, notice was sent to the defendants 3 to 6 and the notice sent to them were served as affixed. Now, the execution petition has already been ordered and the delivery also effected and thus, the execution petition has been terminated and nothing survives for adjudication. Therefore, this Court is not inclined to interfere with the written endorsement made by the Court below.

5. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif,
Thirumangalam.

C.R.P (MD) .No.1408 of 2019
27.08.2019

GCG
MK (10.10.2019) 2P 2C