



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(MD)No.1639 of 2019
and CMP(MD)No.8565 of 2019

WEB COPY

Devaraj

... Petitioner/Petitioner/3rd party

versus

1. Albert
2. Justus
3. Devadas (died)
4. Kamalam
5. Sunilkumar
6. Shajikumar
7. Renga Bai
8. Thanga Bose
9. Stanly
10. Sobhanadhas
11. Jabakumari

...1st Respondent/1st Respondent/Plaintiff

... Respondents 2 to 11/Respondents 2 to 11/
Defendants

Revision Petition filed under Section 115 of C.P.C. against the order dated 12.06.2019 passed in unnumbered E.A.No..... of 2019 (C.F.2745/2019) in E.P.No.100 of 2014 in O.S.No.106 of 2005 on the file of the Principal District Munsif, Kuzhithurai.

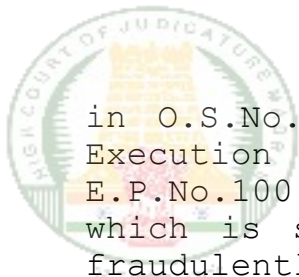
For Petitioner : Mr.R.Nandakumar

ORDER

The revision petitioner filed this Civil Revision Petition challenging the order dated 12.06.2019 passed in unnumbered E.A. in E.P.No.100 of 2014 in O.S.No.106 of 2005 by the Principal District Munsif, Kuzhithurai.

2. Originally, a suit in O.S.No.106 of 2005 was filed by one of the brothers of the revision petitioner for partition in the joint family property. Though the revision petitioner is the brother of the plaintiff in O.S.No.106 of 2005, he was not impleaded as a party to the said suit proceedings. According to the revision petitioner, the plaintiff in O.S.No.106 of 2005 obtained a decree behind his back. Subsequently, the revision petitioner filed a comprehensive suit in O.S.No.230 of 2006 for partition. But, the said suit was dismissed, against which, the revision petitioner preferred A.S.No.29 of 2016 and the same is pending before the Sub Court, Kuzhithurai.

3. In the meantime, the plaintiff in O.S.No.106 of 2005 filed E.P.No.100 of 2014 for the purpose of executing the decree obtained



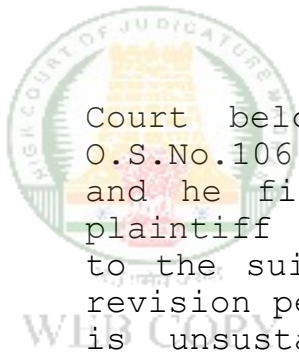
in O.S.No.106 of 2005. Therefore, the revision petitioner filed Execution Application seeking stay of all further proceedings in E.P.No.100 of 2014, stating that he is not a party to the decree, which is sought to be executed and the said decree was obtained fraudulently by the plaintiff behind his back, without impleading him in the said suit. It is further stated by the revision petitioner in the Execution Application that he filed the comprehensive suit in O.S.No.230 of 2006 by impleading his brother, i.e., the plaintiff in O.S.No.106 of 2005. However, the said suit was dismissed, against which, A.S.No.29 of 2016 has been filed and the same is pending before the Sub Court, Kuzhithurai. Under these circumstances, he filed execution application for stay of execution proceedings.

4. However, the Court below, without considering all these aspects dismissed the Execution Application, stating that the revision petitioner is not a party to the suit and therefore, the application filed under Order XXI Rule 29 C.P.C. is not maintainable. Challenging the same, the present revision petition has been filed.

5. The learned counsel appearing for the revision petitioner submits that the brother of the revision petitioner obtained an ex parte decree behind the back of the revision petitioner and therefore, the revision petitioner filed a suit by impleading his brother as party to the suit, which is under appeal and hence, the Execution Application is maintainable. It is further submitted that the revision petitioner is also a co-sharer in the joint family property and hence, the stay petition is maintainable. Therefore, the order passed by the Court below is unsustainable in law. If the Execution Application is not numbered, great prejudice would be caused to the revision petitioner.

6. Heard the learned counsel appearing for the revision petitioner and perused the records.

7. The revision petitioner filed execution application for staying the Execution Proceedings in O.S.No.106 of 2005 stating all the facts that his brother, without impleading him, obtained a fraudulent decree, behind his back and further, he filed a comprehensive suit for partition in O.S.No.230 of 2006, which was dismissed, against which, the appeal is pending before the Sub Court, Kuzhithurai. In such view of the matter, the Court below should have at least numbered the application and heard the revision petitioner about his case and disposed of the same. But, the Court below, without hearing the case of the revision petitioner, dismissed the execution application without numbering the same. Therefore, this Court is of the view that the Court below, without considering the fact that the decree is alleged to have been obtained behind the back of the revision petitioner and he is not a party to the proceedings, dismissed the execution application. The



Court below should have seen the fact that the plaintiff in O.S.No.106 of 2005 is also the brother of the revision petitioner and he filed the said suit for partition. In that event, the plaintiff should have impleaded the revision petitioner as a party to the suit in O.S.No.106 of 2005, but, he has not impleaded the revision petitioner. Therefore, the order passed by the Court below is unsustainable in law. Further, the Court below, without considering all these facts, has passed the dismissal order and therefore, the same is liable to be set aside. Accordingly, the order dated 12.06.2019 passed in unnumbered Execution Application filed in E.P.No.100 of 2014 in O.S.No.106 of 2005 on the file of the Principal District Munsif, Kuzhithurai, is set aside.

8. In the result, the Civil Revision Petition is allowed. The Court below is directed to number the Execution Application and decide the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

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To
The Principal District Munsif,
Kuzhithurai.

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-88139[F] dated 20/09/2019)

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20.09.2019

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