



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABABU

C.R.P. (PD) (MD) No. 600 of 2013

and

M.P (MD) No. 1 of 2013

Jawahar Nagar N.G.O. Cooperative
Building Society 0.1847
through its Secretary
Office at Jawahar Nagar,
Tirunelveli - 7.

..Petitioner/Appellant/Respondent/
Plaintiff

-vs-

Karunakaran

.. Respondent/Respondent/Petitioner/
Defendant

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside order and decretal order dated 16.11.2012 made in C.M.A.No.2 of 2012 on the file of the Principal Sub-Court, Tirunelveli confirming the order passed in I.A.No.149 of 2006 in O.S.No.93 of 2002 on the file of the II Additional District Munsif Judge, Tirunelveli.

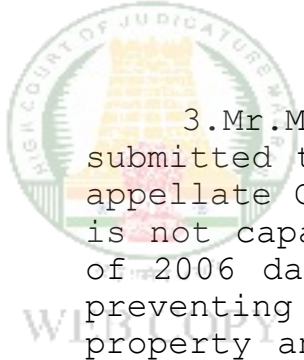
For Petitioner
For Respondent

: Mr.M.Saravanakumar
: Mr.N.G.A.Nataraj

ORDER

This civil revision petition is filed challenging the order passed in I.A.No.149 of 2006 in O.S.No.93 of 2002 dated 14.02.2012 on the file of the II Additional District Munsif, Tirunelveli, confirmed in C.M.A.No.2 of 2012 dated 16.11.2012 on the file of the Principal Sub Court, Tirunelveli.

2.The civil revision petitioner is the plaintiff in the suit, which was filed for recovery of possession against the defendant/respondent herein. In the said suit, the defendant filed I.A.No.149 of 2006 under Section 9 of the Tamil Nadu City Tenants Protection Act for issuing a direction to the plaintiff to execute the sale deed for the suit property in favour of the defendant at the price fixed by the Court. After hearing both sides, the trial Court allowed the application on 14.02.2012. But the plaintiff filed C.M.A.No.2 of 2012 on the file of the Sub Court, Tirunelveli and challenged the said order of the trial Court. The appellate Court dismissed the appeal and confirmed the order of the trial Court by its judgment and decree dated 16.11.2012. Hence, the present civil revision petition is filed before this Court.



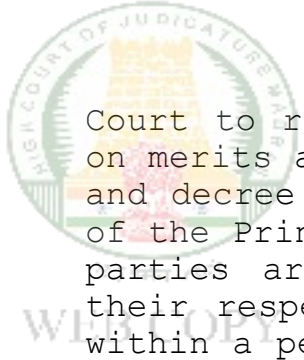
3.Mr.M.Saravanakumar, learned counsel for the petitioner submitted that the order passed by the trial Court confirmed by the appellate Court cannot be sustained, more particularly when the same is not capable of execution in view of a decree passed in O.S.No.65 of 2006 dated 17.06.2009 by the District Munsif Court, Tirunelveli preventing the plaintiff herein from alienating the subject matter property and other properties, by way of permanent injunction. He further submitted that unfortunately the said decree passed in O.S.No.65 of 2006 was not brought to the notice of the trial Court as well as the appellate Court, while hearing the I.A. and appeal respectively. Therefore, he submitted that the plaintiff society will not be in a position to comply with the order passed in the said I.A., even assuming that the plaintiff is not contesting the matter on merits.

4.The learned counsel for the respondent, however, submitted that since there is an order passed by the trial Court confirmed in the appeal, it is for the plaintiff to honour the said order.

5.Heard both sides.

6.It is seen that the trial Court allowed the application under Section 9 of the Tamil Nadu City Tenants Protection Act and directed the defendant therein to deposit a sum of Rs.1,00,000/-. Therefore, the effect of the order is to execute the sale deed in favour of the defendant by the plaintiff. No doubt, the said order was confirmed in the appeal. However, the fact remains that in another suit filed in O.S.No.65 of 2006, the District Munsif Court, Tirunelveli, by its judgment and decree dated 17.06.2009 granted permanent injunction restraining the plaintiff from alienating the schedule mentioned property therein. It is not in dispute that the subject matter of the present suit and the Section 9 application is forming part of the suit schedule property in O.S.No.65 of 2006. Therefore, it is evident that even as on the date of passing the order in I.A.No.149 of 2006, the decree already granted in O.S.No.65 of 2006 dated 17.06.2009 is operating against any alienation. Unfortunately, the said fact was not brought to the notice of the trial Court. Therefore, I am of the firm view that this aspect has to be considered by the trial Court to pass a fresh order on the Section 9 application. It is also made clear that I am not expressing any view on the other findings rendered by the trial Court or the appellate Court, as this Court is inclined to remit the matter only for the purpose that the decree passed in O.S.No.65 of 2006 by the Principal District Munsif Court, Tirunelveli, has to be taken note of and considered while deciding the application under Section 9 of the said Act.

7.Accordingly, this Civil Revision Petition is allowed and order passed in I.A.No.149 of 2006 in O.S.No.93 of 2002 dated 14.02.2012 and the judgment and decree in C.M.A.No.2 of 2012 on the file of the Principal Sub-Court, Tirunelveli dated 16.11.2012 are set aside. Consequently, the matter is remitted back to the trial



Court to rehear the I.A.No.149 of 2006 and pass appropriate orders on merits and in accordance with law, after considering the judgment and decree passed in O.S.No.65 of 2006 dated 17.06.2009 on the file of the Principal District Munsif Court, Tirunelveli. The respective parties are permitted to adduce further evidence in respect of their respective claim. The trial Court shall dispose of the I.A within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Subordinate Judge,
Tirunelveli.

2.The II Additional District Munsif Judge,
Tirunelveli

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-73263[F] dated
04/07/2019)

+1 CC to M/s.N.GA.NATRAJ, Advocate (SR-73303[F] dated 04/07/2019)

C.R.P. (PD) (MD) No. 600 of 2013

and

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skn

KK/SAR/19.07.2019/3P-5C

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