

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12..02..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.2657 of 2019
and
C.M.P.Nos.17539 & 17540 of 2019

1.Sivanandha Vadivel
2.Sivanmalai Gounder

....Petitioners/Plaintiffs

-Versus-

1.The Commissioner,
HR & CE Department,
Chennai 600 034.
2.The Joint Commissioner,
HR & CE Department,
Chennai 600 018.
3.The Assistant Commissioner,
HR & CE Department,
Tiruppur-4.
4.The Fit Person,
A/M Kasiviswanathaswamy Temple,
Uthamapalayam Village,
Kangeyam Taluk,
Tiruppur District.

.... Respondents/Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 28.03.2019 made in I.A.No.627 of 2018 in O.S.No.305 of 2017 by the learned Subordinate Judge, Kangeyam, Tiruppur District.

For Petitioner(s) : Mr.P.Srinivas
for Mr.K.Rajendra Prasad
For Respondent(s) : No Appearance for RR 1 to 4

ORDER

This civil revision petition is directed against the order dated 28.03.2019 passed by the learned Subordinate Judge, Kangayam, dismissing the application filed by the petitioner Under Rule 74 of The Civil Rules of Practice seeking to send for the judgement and decree passed in O.S.No.43 of 1920 on the file of the learned Subordinate Judge, Coimbatore.

2. The petitioner is the plaintiff in O.S.NO.305 of 2017. He has filed the above said suit against the respondents for a decree of declaration (i) declaring that the plaintiffs are the absolute owners of the suit property; (ii) permanent injunction restraining the defendants from trespassing into the suit property or interfering in any manner with the plaintiffs' peaceful possession and enjoyment of the same. According to the petitioners, their right has already been decided in an earlier suit in O.S.No.43 of 1920 on the file of the learned Subordinate Judge, Coimbatore, by judgement and decree dated 29.06.1921. Despite all efforts, the petitioners could not get the certified copy of the judgement and decree in O.S.No.43 of 1920. Therefore, the petitioners filed the application invoking Rule 74 of The Civil Rules of Practice seeking to send for the judgement and decree. However, the court below dismissed the application holding that if petitioner wanted to rely upon the judgement and decree passed in the earlier suit, he could approach the court concerned seeking certified copies of the judgement and decree and as such the application is not maintainable. Aggrieved by the said order, the plaintiff is before this court with this revision petition.

3. The learned counsel for the petitioner would submit that already the petitioner had approached the Sub Court, Coimbatore for certified copies of the judgement and decree, but, the learned Subordinate Judge had refused to accept the application for copies of judgement and decree. In the above circumstances, the petitioner is before this court.

4. It is needless to state that if the petitioners rely upon the judgement and decree passed in the earlier suit, it is always open to the apply for certified copy of the judgement and decree before the court which had passed such decree and let in the same in evidence in support of their case. As rightly held by the court below, when the petitioners could not get certified copies of a judgement and decree from the court concerned, the same could not be called for Rule 74 of the Civil Rules of Practice and the petitioner cannot maintain such a petition in the given facts and circumstances of the case. Thus, this court

finds no infirmity in the order passed by the learned Subordinate Judge dismissing the application of the petitioner. However, the petitioner is directed to file appropriate application before the learned Subordinate Judge, Coimbatore, seeking certified copies of the judgement and decree in the earlier suit referred to above and if the judgement and on such application, if the judgement and decree are available in the court, the learned Subordinate Judge, Coimbatore shall consider the application for copies and furnish certified copies of the same to the petitioner, if they are entitled for copies as per law. The petitioner is directed to file appropriate application for certified copies within a period of one week from the date of receipt of a copy of this order and on such application, the learned Subordinate Judge, Coimbatore, is directed to consider the same and furnish certified copies of the judgement and decree, if available in the court, to the petitioners, within a period of two weeks thereafter. Till then, the learned Subordinate Judge, Kangeyam, Tiruppur District, shall not proceed with the trial of the suit in O.S.No.305 of 2017.

In the result, The civil revision petition is devoid of merit and the same is dismissed accordingly with the above directions. No costs. Consequently, connected CMPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk

To

- 1.The Subordinate Judge, Kangeyam, Tiruppur District.
- 2.The Subordinate Judge, Coimbatore, Coimbatore District.

C.R.P.No.2657 of 2019

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