



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.R.P. (NPD) (MD)No.246 of 2012

S.Manoharan

: Petitioner/Plaintiff

Vs.

Tamil Nadu (Home) Courts Department
Fort St. George, Chennai
through its Secretary

:Respondent/1st defendant

PRAYER: Civil Revision Petition under Section 115 of the Code of Civil Procedure against the order and decreetal order dated 11.08.2010 in E.P.No.38/2009 in O.S.No.152/1999 on the file of the District Munsif, Madurai Taluk, Madurai.

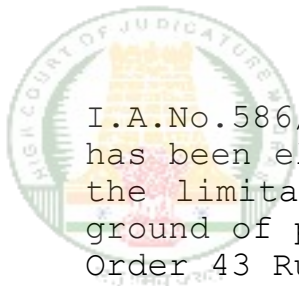
For Petitioner : Ms.Al.Gandhimathi

For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

This Civil Revision Petition has been directed against the impugned fair and decreetal order dated 11.08.2010 in E.P.No.38/2009 in O.S.No.152/1999 passed by the District Munsif Court, Madurai, refusing the prayer to direct the respondent to record the date of birth of the petitioner in the Service Register as 20.01.1954, instead of 06.07.1952 on the ground that for executing a decree of mandatory injunction, the limitation period is three years from the date of decree and the said period does not enlarge on the ground of pendency of collateral proceedings under Order 9 Rule 13 or Order 43 Rule 1 CPC, when there is no application to set aside the exparte decree is dismissed and appeal is also dismissed.

2. Learned counsel for the petitioner would submit that when the petitioner/plaintiff filed a suit for declaration and consequential decree for mandatory injunction, the same was decreed on 25.09.2000 exparte, the set aside application was filed under Order 9 Rule 13 of the Civil Procedure Code and therefore, the petitioner was advised not to move the execution petition. However, after waiting for a long time, the application to set aside the exparte decree was dismissed and thereafter, an application in



I.A.No.586/2004 was filed and the same is pending. However, this has been elaborately considered by the Execution Court, holding that the limitation period of three years does not get enlarged on the ground of pendency of collateral proceeding under Order 9 Rule 13 or Order 43 Rule 1 of the Code of Civil Procedure.

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3. In the present case, when the interlocutory application seeking an order to set aside the exparte decree was dismissed and subsequently another application in I.A.No.586/2004 was filed and the same is pending, the petitioner cannot unnecessarily wait on the ground that the application filed by the other side is pending. The reason being that when the petitioner has obtained an exparte decree on 20.05.2009, the three years period of limitation from the date of decree, cannot get extended. Therefore, this Court finds no merit in the Civil Revision Petition. Accordingly, the Civil Revision Petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The District Munsif, Madurai District, Madurai.

2. The Secretary to Government,
Tamil Nadu (Home) Courts Department,
Fort St. George, Chennai.

+1 CC to M/s.Special Govt.Pleader (SR-1362[F] dated 10/01/2020)

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-1251[F] dated 10/01/2020)

CRP (NPD) (MD) No.246 of 2012
09.01.2020

RR

SDS (12.02.2020) 2P-5C