



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.43059 of 2016

1.Kannammal

2.G.Devaraju @ C.Devaraj ... Petitioners

-Vs-

1.The District Registrar
Office of the District Registrar's Office
Coimbatore.

2.The Sub Registrar
Office of Sub-Registrar Office
Annur, Coimbatore District.

3.C.Ponnammal ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 2nd respondent herein to remove or erase the entry of encumbrance made on the petitioners property by the 3rd respondent in survey No.430 Kuppaiya Palayam Village Avinasi Taluk in pursuance to the exparte decree dated 01.02.2014 made in O.S No.1922 of 2012 on the file of I Additional District Munsif Coimbatore Registered as Document No.4576/ 2014 an account of subsequent order made in I.A. No.2127 of 2014 on 15.12.2015 setting aside the exparte decree by considering the petitioners representation dated 17.11.2016.

For Petitioner : Mr.R.Veeramani

For Respondents : Mr.P.Purushothaman
Government Advocate - for RR 1 and 2
Mr.C.D.Johnson - for R3

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the 2nd respondent herein to remove or erase the entry of encumbrance made on the concerned records pertaining to the petitioners property by the 3rd respondent in survey No.430 Kuppaiya Palayam Village Avinasi Taluk in pursuance to the exparte decree dated 01.02.2014 made in O.S No.1922 of 2012 on the file of I Additional District Munsif, Coimbatore registered as Document No.4576/ 2014 an account of subsequent



order made in I.A. No.2127 of 2014 on 15.12.2015 setting aside the exparte decree by considering the petitioners representation dated 17.11.2016.

2. The case of the petitioner is that, in respect of the property belonging to the mother of the first petitioner and the third respondent, it seems that there had been a settlement by the mother in favour of the first petitioner. The second petitioner is the son of the first petitioner. Subsequent to the said settlement made by the mother of the first petitioner in favour of the first petitioner, the third respondent, who is also the daughter of the mother, seems to have approached the Civil Court and filed a suit in O.S.No.1922 of 2012 on the file of the I Additional District Munsif Court, Coimbatore, where the third respondent was able to get exparte decree on 01.02.2014.

3. On the strength of the exparte decree obtained by the third respondent, she approached the second respondent Sub Registrar to register the exparte decree in the Encumbrance Register. On such plea the second respondent also made entry in the Encumbrance Register. Thereafter, the petitioner had approached the Civil Court by filing an interlocutory application in I.A.No.2127 of 2014 to set aside the exparte decree. That petition was also allowed on 15.02.2015 by the concerned Civil Court and thereafter the suit is still pending at the said Court for adjudication.

4. Subsequently, in view of the exparte decree having been set aside by the orders of the Civil Court dated 15.02.2015, the petitioners, especially the second petitioner, who, on his behalf as well as on behalf of the first petitioner has given a representation to the second respondent on 17.01.2016, requesting him to remove the encumbrance registered on 01.02.2014 in view of the Civil Court order passed in this regard as stated above, setting aside the exparte decree. However, the said request, having not been considered by the second respondent, the petitioners have approached this Court by filing the present writ petition with the aforesaid prayer.

5. Heard Mr.Veeramani, learned counsel appearing for the petitioner, who, after having reiterated the aforesaid facts, would seek the indulgence of this Court to issue suitable direction to the second respondent Sub Registrar to remove the entry of encumbrance entered into by him on 01.02.2014 by considering the representation of the petitioners dated 17.11.2016.

6. I have heard Mr.C.D.Johnson, learned counsel appearing for the third respondent, who would submit that, when the third respondent herself is one of the daughter along with the first petitioner, the settlement which was in question before the Civil Court is not a proper settlement. Therefore, in



order to set right the things, the third respondent already approached the Civil Court, where she was able to get an exparte decree initially. Subsequently, after this encumbrance was created at the instance of the third respondent on the file of the second respondent, then only the first petitioner rushed to the Civil Court and filed the interlocutory application to get the exparte decree set aside. Thereafter, the adjudication is pending before the Civil Court which is likely to be completed in shortest possible time. When that being so, unless the adjudication is completed by the Civil Court, the encumbrance created on the file of the second respondent need not be erased or removed now and in this regard, enquiry can be conducted by the second respondent and accordingly he can decide whether the encumbrance created at the instance of the third respondent can be erased or not, by considering the representation of the petitioner.

7. I have heard Mr. P.Purushothaman, learned Government Advocate appearing for the official respondents, who would submit that, if at all encumbrance has already been created, of course pursuant to the exparte decree and subsequently the exparte decree was set aside and a representation has been given to remove the said encumbrance created in view of the order of the Civil Court, needful would be done in the Encumbrance Register by the second respondent in accordance with law after following due process.

8. I have considered the submissions made by the learned counsel for the petitioner, learned Government Advocate appearing for the official respondents, learned counsel for the third respondent and also perused the materials placed on record.

9. As has been pointed out by the learned counsel for the petitioner, in respect of the settlement made by the mother of the first petitioner and the third respondent, in favour of the first petitioner alone, whether such settlement is right or wrong can be a matter to be gone into only by the Civil Court, for which, already the parties have approached the Civil Court, where the suit filed by the third respondent is pending.

10. In the meanwhile, since the third respondent had obtained an exparte decree and pursuant to which, she had created an encumbrance at the second respondent office on 14.02.2014 on the strength of the exparte decree, subsequently when the said exparte decree was set aside at the instance of the petitioner in the interlocutory application referred to above by order dated 15.12.2015, and the same is brought to the notice of the second respondent by the representation of the petitioner dated 17.11.2016, normally the second respondent would immediately act upon and based on the order passed by the Civil Court, setting aside the exparte decree and remove the encumbrance already created. But, for the



best reasons known to him, so far the second respondent has not acted upon the representation.

11. Insofar as the pendency of the Civil Suit is concerned, it is for the Civil Court to decide the merits of the issue raised in the Civil Court. That will not have any bearing on the registering authority to remove the encumbrance already created in the Encumbrance Register because, the encumbrance created was based on the exparte decree granted by the Civil Court.

12. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order. That there shall be a direction to the second respondent to consider the representation of the petitioner dated 17.11.2016 and do the needful for removal of the encumbrance created by him or his predecessor in the Encumbrance Register in respect of the property in question, dated 01.02.2014, by acting upon the representation given by the petitioner on the basis of the order passed by the Civil Court on 15.02.2015 in I.A.No.2127 of 2014 in O.S.No.1922 of 2012 on the file of the I Additional District Munsif Court, Coimbatore and the needful as indicated above shall be undertaken by the second respondent within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

KST

To

1.The I Additional District Munsif Court,
Coimbatore.

2.The District Registrar
Office of the District Registrar's Office
Coimbatore.

3.The Sub Registrar
Office of Sub-Registrar Office
Annur, Coimbatore District.

+1cc to Mr.R.Veeramani, Advocate, S.R.No. 23584

+1cc to the Government Pleader, S.R.No. 24012

W.P.No.43059 of 2016