



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No. 909 of 2020

C.M.P. (MD) .No.5953 of 2020

WEB COPY

VenkataRamani

... Petitioner/Respondent/Respondent/Defendant

Vs.

Mani (Died)

... Nil/Nil/Petitioner/Plaintiff

1.Solaipushpam

2.Maheswari

... Respondents/Petitioner/Petitioner/LRs

(Rep by their power agent Veeramani)

PRAYER:- Civil Revision Petition filed under Article 115 of CPC., to set aside the fair and decreetal order dated 07.02.2020 passed in E.A.No.1 of 2019 in E.P.No.16 of 2015 in O.S.No.175 of 2011 on the file of the learned Sub-Court, Thoothukudi by allowing this Revision Petition.

For Petitioner

: Mr.S.Vellaichamy

For Respondents

: Mr.R.Pon Karthikeyan

O R D E R

The defendant before the Sub-Court, Thoothukudi is the revision petitioner before this Court challenging the order passed in E.A.No.1 of 2019 in E.P.No.16 of 2015.

2. The brief facts leading to filing of this revision are as follows:

The plaintiff had filed a suit in O.S.No.175 of 2011 before the Sub-Court, Thoothukudi, for specific performance as against the petitioner herein. The suit was decreed by judgment and decree dated 11.11.2011. Thereafter, the plaintiff/decreed holder had filed E.P.No.16 of 2015 for a direction to the petitioner herein to execute the sale deed in favour of him, failing which, to have executed the sale deed through Court.

3. It appears that the execution petition was dismissed for default on 20.09.2018. Therefore, the plaintiff/decreed holder filed E.A.No.01 of 2019 to restore the execution proceedings which had been dismissed for default on 20.09.2018. Pending the application, the sole plaintiff/decreed holder has died and his wife and daughters were impleaded as petitioners in E.A.No.01 of 2019. The petitioner herein has resisted the above application stating that the



plaintiff/decree holder died on 26.09.2016 and the execution proceedings were adjourned frequently for bringing on record his legal representatives. Thereafter, I.A.No.395 of 2016 was filed to bring on record the legal heirs and this petition was ordered on 11.04.2018. Thereafter, the petition was being adjourned from 11.04.2018 to 20.09.2018 for carrying out the necessary amendments. Since the amendment was not carried out, E.P was dismissed for default.

4. The petitioner herein would submit that the reasons given for the delay are absolutely false and therefore, the petition deserves to be dismissed.

5. The learned Sub Judge, by order dated 07.02.2020, was pleased to allow the petition on condition that a sum of Rs.2,500/- be paid on or before 24.02.2020 to the respondent/petitioner herein. Aggrieved by the said order, the petitioner is before this Court.

6. The learned counsel for the petitioner herein would submit that the respondents herein were protracting the proceedings and the matter was adjourned on several occasions for carrying out the amendments. It was only when the respondents had not carried out the necessary amendments even after a lapse of five months from the date of legal heirs being brought on record, that the learned Judge proceeded to dismiss the Execution Proceedings for default. He would further submit that the order of the learned Sub-Ordinate Judge passed in E.A.No.01 of 2019 in E.P.No.16 of 2015 in O.S.No.175 of 2011 has to be set aside.

7. Heard the learned counsels appearing on behalf of the revision petitioner and the respondents.

8. It is an admitted fact that the petition for restoration has been filed immediately by the plaintiff without any delay. Further, the decree in O.S.No.175 of 2018 is sought to be enforced. The reasons given in the affidavit filed in support of the petition for restoration are sufficient and the trial Court has rightly allowed the petition. I do not find any reason to interfere with the same.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Cs-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



ssb

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The Judge,
Sub-Court, Thoothukudi

C.R.P (PD) (MD) No.909 of 2020
08.12.2021

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