



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.02.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P(MD)Nos.791 and 792 of 2014

and M.P(MD) No. 2 of 2014

CRP(MD)No.791 of 2014:

Kurumathoor Primary Agricultural
Co-operative Credit Society Ltd., No.Y.73,
Kuzhithurai P.O., Kanyakumari District
through its President
(Cause title accepted as per the order
dated 26.03.2014 made in
M.P(MD) No. 1 of 2014 in
CRP(SR) No. 11051/2014 by TMJ) ... Petitioner/Respondent/Defendant

Vs.

Thiru Ramadoss ... Respondent/Petitioner/1st Plaintiff

CRP(MD)No.792 of 2014:

Kurumathoor Primary Agricultural
Co-operative Credit Society Ltd., No.Y.73,
Kuzhithurai P.O., Kanyakumari District
through its President
(Cause title accepted as per the order
dated 26.03.2014 made in M.P(MD) No. 1 of 2014 in
CRP(SR) No. 11053/2014 by TMJ) ... Petitioner/Respondent/Defendant

Vs.

1.A.S.Padma Kumari
2.K.Ramesh Kumar
3.K.Ratheesh Kumar
4.K.Rajesh Kumar ... Respondents/Petitioners 2 to 5
/Lrs of the second Plaintiff

COMMON PRAYER:- Civil Revision Petitions are filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 07.01.2014 in E.P.Nos.54 and 97 of 2010 in O.S.No.601 of 1994 on the file of the Kuzhithurai District Munsif Court.

In CRP(MD)No.791 of 2014:

For Petitioner : Mr.H.Lakshmi Shankar
For Sole Respondent : Mr.L.Shaji Chellan

In CRP(MD)No.792 of 2014:

For Petitioner : Mr.H.Lakshmi Shankar
For Respondents : (*)**Mr.C.Shaji Chellan**

**COMMON ORDER**

These revisions are filed by the defendant in O.S.No.601 of 1994 on the file of the District Munsif Court, Kuzhithurai challenging an order made by the executing court in E.P.Nos.54 and 97 of 2010.

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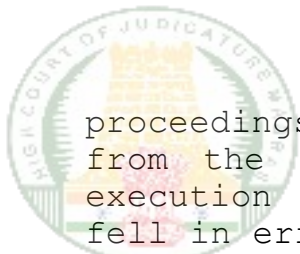
2. The suit was laid by the plaintiffs, who are the employees of the defendant bank for mandatory injunction directing the defendant bank to implement 12(3) Settlement deed dated 04.03.1994 entered into as per G.O. 2(d) No.68 dated 12.11.1993. The suit was decreed and the said decree was confirmed in Second Appeal by this Court. Thereafter, the first plaintiff in the suit namely, Ramadhas, filed E.P.No.54 of 2010. The second plaintiff Kumaraswamy and his legal heirs filed E.P.No.97 of 2010.

3. These execution proceedings were resisted by the defendant bank contending that after the decree, 12(3) Settlement was implemented. The amount payable to the plaintiffs was calculated and paid over as evidenced by the acquittance register, which have been marked as Exts. R2 to R5.

4. The learned Executing Judge however concluded that the calculation of the amount reflected in Exts.R2 to R5 appears to be wrong and made his own calculation relying on the 6th pay commission report and passed an order directing the legal heirs of the deceased second plaintiff would be entitled to Rs.91,166/-. The first plaintiff would be entitled to Rs.1,62,140/-. It is this order is questioned in these revisions by the petitioner/defendant bank.

5. I have heard Mr.H.Lakshmi Shankar, learned counsel appearing for the petitioner and Mr.C.Shaji Chellan, learned counsel appearing for the sole respondent in C.R.P(MD)No.791 of 2014. (**)

6. The decree in the suit itself, in my considered opinion, is an inexecutable decree, which only directs the defendant bank to implement 12(3) Settlement. According to the petitioner, 12(3) Settlement was implemented and arrears amount was calculated and paid over to the employees and they had received it without objection and therefore, the execution petitions are not maintainable. Even otherwise the second appeal was disposed of by this Court on 23.07.2014 and the decree being one for mandatory injunction, the decree holders should have filed petitions seeking execution within 3 years. These execution petitions have been filed in the year 2010 which is clearly beyond the period of 3 years prescribed under Article 135 of the Limitation Act. The prayer in the execution petitions also is for realization of money by attachment and sale of the defendant's immovable property. At the risk of repetition, I must point out that there is no decree for recovery of money in favour of the plaintiffs. Even assuming that the decree for mandatory injunction could be executed, execution



proceedings should have been launched within a period of three years from the date of the decree. Looking at from any angle, these execution petitions are not maintainable and the Executing Judge fell in error in treating the decree as a money decree and directing payment of money.

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7. In view of the above, the fair and decreetal order dated 07.01.2014 in E.P.Nos.54 and 97 of 2010 in O.S.No.601 of 1994 on the file of the District Munsif Court, Kuzhithurai, is set aside.

8. In fine, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

(*) and () Substituted and Deleted
as per order dated 01.04.2021**

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

(*) to be substituted the order already despatched on 22.02.2021

1.The District Munsif Court, Kuzhithurai.

2.The Section Officer, (2C)

VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-3258[F] dated 04/02/2021)

+2 CC to M/s.L.SHAJI CHELLAN, Advocate (SR-3235[F],3236 dated 04/02/2021)

C.R.P(MD)Nos.791 and 792 of 2014
and M.P(MD) No. 2 of 2014
03.02.2021

SV2 (CO)

KB(19.02.2021) 3P 7C

TR(17.04.2021) 3P 7C