



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2323 of 2014

and

M.P(MD)No.1 of 2014

Mr.R.Kaliraj

... Petitioner/
1st Respondent/
Plaintiff

Vs.

1.Mr.S.Nagaraj

... 1st Respondent/
Petitioner/
Appellant

2.District Registrar,
Periakulam Taluk,
Periakulam,
Theni District.

3.Sub Registrar,
Theni Taluk,
Theni,
Theni District.

... Respondents 2 & 3/
Respondents 2 & 3/
Defendants 1 & 2

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to pass an order setting aside the order, dated 26.08.2014 passed in I.A.No.71 of 2013 in A.S.No.44 of 2012 by the Sub Court, Theni.

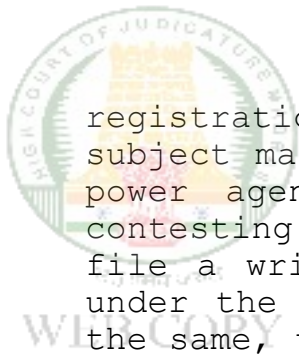
For Petitioner : Mr.S.Anand Chandrasekar

For R-1 : Mr.D.Venkatesh

For R-2 & R-3 : Given up

ORDER

The present revision petition has been filed challenging an order permitting an additional evidence before the First Appellate Court. The revision petitioner is the plaintiff. He filed O.S.No.222 of 2008 before the District Munsif Court, Theni for the relief of declaration of title and permanent injunction restraining the



registration authorities from registering any property, which is the subject matter of the suit. The tenth defendant in the suit is the power agent of the third defendant. Only D3 and D10 were the contesting parties in the suit. However, both of them did not even file a written statement and remained exparte. Only the authority under the Registration Act filed the written statement. Based upon the same, the trial Court proceeded to decree the suit as prayed for on 02.07.2009.

2. Challenging the said exparte decree, the tenth defendant filed A.S.No.44 of 2012 before the Sub Court, Theni, under Section 96 (2) of the Civil Procedure Code. While the First Appeal was pending, the appellants/tenth defendant filed I.A.No.71 of 2013 under Order 41, Rule 27 seeking permission of the First Appellate Court to let in oral and documentary evidence in the first appellate stage. The said application has been allowed by the First Appellate Court. Challenging the said order, the plaintiff has filed the above revision petition.

3. Admittedly, the tenth defendant in the suit did not even file a written statement and he has remained exparte. Though the tenth defendant is entitled to file a statutory first appeal, as contemplated under Section 96(2) of the Civil Procedure Code, the scope of the first appeal filed by the judgment debtor who remained exparte is very limited. The appellant who has suffered an exparte decree can challenge the decree only on legal grounds. He has not filed a written statement before the trial Court. When there are no pleadings on the side of the tenth defendant, he is not entitled to let in any oral or documentary evidence. Even assuming that the appellant in the first appeal is permitted to let-in evidence, the same cannot be looked into by the First Appellate Court, when there are no pleadings to the said effect. Hence, the order of the First Appellate Court in allowing the additional evidence application by the appellant who has not even filed a written statement is an exercise in futility. The order of the First Appellate Court allowing Order 41, Rule 27 application is liable to be set aside. The order, dated 26.08.2014 passed in I.A.No.71 of 2013 in A.S.No.44 of 2012 on the file of the Sub Court, Theni, is set aside.

4. The Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

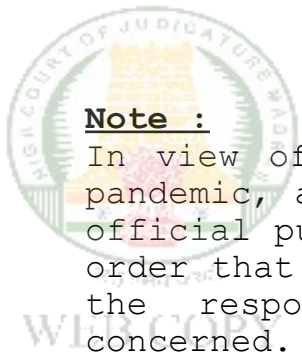
Sd/-
Assistant Registrar(AS)

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

btr

<https://hcservices.ecourts.gov.in/hcservices/>



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

- 1.The Sub Judge,
Theni.
- 2.District Registrar,
Periakulam Taluk,
Periakulam,
Theni District.
- 3.Sub Registrar,
Theni Taluk,
Theni,
Theni District.
- 4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-17668[F] dated 11/04/2022)

Order made in
C.R.P (MD) No.2323 of 2014
08.04.2022

MK/27.04.2022/3P/7C