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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.04.2022
DELIVERED ON	10.06.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P(MD)No.1652 of 2015

and MP(MD)No.1 of 2015

Rukmani Ganesan

...Petitioner/Respondent/Petitioner/
Plaintiff

Vs.

Jayalakshmi Nallammal

...Respondent/Petitioner/R-2/D-2

PRAYER: Civil Revision Petition under Article 227 of Constitution of India, to call for the records in connection with E.A.No.161 of 2014 in E.P.No.4 of 2004 in O.S.No.140 of 1989 on the file of Principal District Court, Sivagangai and to allow the Civil Revision Petition and to strike off the execution application.

For Petitioner : Mr.M.Ajmal Khan, Senior Advocate,
for M/s.Ajmal Associates

For Respondent : Mr.V.Meenakshi Sundaram, for
Mr.G.Mohan Kumar

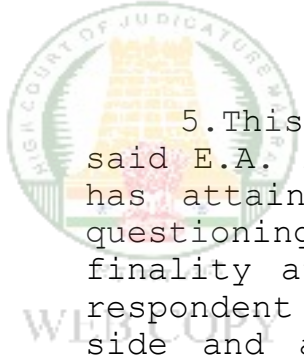
ORDER

The Civil Revision Petition has been filed to strike off the petition in E.A No.161 of 2014 in E.P.No.4 of 2004 in O.S.No.140 of 1989, pending on the file of the Principal District Court, Sivagangai.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The plaintiff has filed a suit in O.S.No.140 of 1989 on the file of the Principal District Cour, Sivagangai, for recovery of money and the same was decreed on 30.11.1996 and thereafter, he has filed an execution petition in E.P.No.4 of 2004 for sale of immovable properties belonged to the defendant/Judgment debtor, were sold and sale was confirmed on 28.04.2004 and the said execution petition was also terminated. After that, 4th defendant has filed an application in E.A.No.161 of 2014. Hence, the plaintiff is before this Court.

4.Heard on either side. Perused the material documents available on record.



5.This Civil Revision Petition is filed on the ground that the said E.A. is an abuse of process of Court. When the exparte decree has attained finality, no useful purpose will be served by the questioning the orders passed in the execution proceedings. The finality attained in execution petition, cannot be unsettled. The respondent herein is aware of all the proceedings of the original side and also on the execution side. The application is highly belated it is not even averred when and how she came to know of the order passed in the E.P. The pendency of E.A. will make any reasonable litigant lose faith in the administration of justice. The suit and E.P. cannot go for ever. All the averments in the E.A. under the challenge are also absolutely false and legally untenable.

6.Originally, the suit was filed against one Subramanian. During the pendency of the suit he died and his legal heir was added in the suit. The suit was decreed against the legal heir of the said Subramanian.

7.The Suit was decreed as exparte. Against the decree the defendants have filed a petition under Order 9 Rule 13 of Civil Procedure Code and the same was dismissed. Against which, this Civil Revision Petition has been filed and the same was also dismissed. They have not preferred against the decree.

8.Now, in the said E.P., the 4th defendant has filed an application in E.A No.161 of 2014 and also filed a petition under Section 5 of Civil Procedure Code to condone the delay of filing 5114 days in exparte order.

9.Section 5 is not at all applicable in the execution petition as per Judgment reported in 2003(4) CTC 225.

10.The petitioner has contested through R7 who is power agent of R7. I.A.No.222 of 1997 was allowed and R7 recognised as power agent for other legal heirs. In E.P.No.30 of 1999 the mother of the petitioner also contested the matter and took several adjournments finally set exparte.

11.The mother of the petitioner also filed a petition in I.A.No.11 of 2004 to set aside the exparte decree with long delay which was dismissed and against which she has also filed C.R.P.(NPD) No.221 of 2004 and the same was also dismissed.

12.Admittedly all the defendants are residing in one address.

13.Without filing a petition to set aside the decree, the petitioner in E.A.No.161 of 2014 cannot file a petition to set aside the exparte order and EP that too with inordinate delay of 5114 days delay.



14. Already sale was confirmed and possession also handed over to the purchaser and the said Execution Petition was also terminated.

15. Again and again, the defendant has filed petition after petition to stop enjoyment of decree by the revision petitioner from the year 1996.

16. Since the Execution Petition itself terminated and no petition was filed by the respondent/petitioner/D4 to set aside the exparte decree the respondent/petitioner has no right to file exparte order set aside petition in the Execution Petition.

17. Finally, this Civil Revision Petition is allowed and petition in E.A No.161 of 2014 in E.P.No.4 of 2004 in O.S.No.140 of 1989, pending on the file of the Principal District Court, Sivagangai, is struck off. No Costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

ksa

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 Principal District Judge, Sivagangai.

Copy to

The Section Officer, V.R. Section,

Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s. G. MOHAN KUMAR, Advocate SR-25130[F] dated 10/06/2022

+1 CC to M/s. AJMAL ASSOCIATES, Advocate (SR-25280[F] dated 13/06/2022)

Order made in
C.R.P. (MD) No. 1652 of 2015
10.06.2022

dks (CO)

TR (29.06.2022) 3P 6C

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