



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD)No.2360 of 2017

and

C.M.P.(MD)No.11341 of 2017

S.Dhanabakkiyam

... Petitioner/Respondent/
Respondent

-vs-

Arukkani Ammal

... Respondent/Petitioner/
Petitioner

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.09.2017 passed in I.A.No.735 of 2017 in I.A.No.714 of 2016 in O.S.No.116 of 2012 on the file of the learned Additional Subordinate Judge, Karur, by allowing this revision petition.

For Petitioner : Mr.Balaji
for Mr.Niranjan S.Kumar

For Respondent : Mr.K.Suresh

ORDER

The plaintiff is the revision petitioner before this Court. The revision petitioner is aggrieved by the order passed in IA No.735 of 2017 in I.A.No.714 of 2016 in O.S.No.116 of 2012 by the learned Additional Subordinate Judge, Karur.

2.The brief facts are as follows:-

(i) The revision petitioner had filed a suit for a declaration that the decree passed in OS No. 133 of 1988 on the file of the District Munsif, Karur, is null and void and for a declaration that 'A' schedule property belongs to the plaintiff and consequentially, directing the defendants 1 to 3, 7 and 11 to hand over the possession of suit 'A' schedule property to the plaintiff or in the alternative divide an extent of 20 cents from schedule 'B' by taking into account the good and bad nature of the soil and allotting the same to the plaintiff and for consequential injunction.



(ii) The third defendant/ respondent had filed a detailed written statement. Thereafter, he had come forward with the petition in IA No.714 of 2016 to reject the plaint. In that application, he had come forward with an application to receive the following documents:-

WEB COPY

1. 12.08.2015 - Fair orders passed in I.A.No.591 of 2014 in O.S.No.300 of 2013 on the file of the Additional District Munsif, Karur.

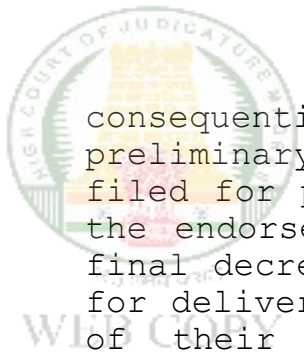
2. 12.08.2015 - Decreetal order passed in I.A.No.591 of 2014 in O.S.No.300 of 2013 on the file of the Additional District Munsif, Karur.

3. 27.10.2015 - Adangal Extract pertaining to S.F.No.490/2 standing in the name of K.Shanmugasundaram

(iii) This application was objected to by the petitioner contending that such an application is unknown to an application filed for rejecting the plaint and the petition is nothing, but an abuse of process of Court. The learned Additional Subordinate Judge, Karur, by order dated 21.09.2017 was pleased to allow the said petition. Aggrieved by the order, the revision petitioner/plaintiff is before this Court.

3.The learned counsel appearing on behalf of the revision petitioner would contend that the application under Order 8 Rule 2 of the Code of Civil Procedure is unknown in an application filed for rejecting the plaint. He would submit that in an application for rejecting the plaint, the only document to be considered in the plaint and the documents filed along with it. In these circumstances, the order of the learned Judge permitting the additional documents to be filed, is *per se* erroneous and is liable to be set aside.

4.Per contra, the learned counsel appearing on behalf of the respondent would contend that the ground on which the application for rejecting the plaint has been filed is that earlier proceedings in O.S.No.133 of 1988 had been filed by the respondent herein, deceased defendants 1 and 2 and Maruthaiammal for a partition and separate possession of their shares against their brother and sister. In the said suit, the petitioner's husband was the fourth defendant and a preliminary *ex parte* decree had been passed as he had not participated in the proceedings and after that the final decree was filed in I.A.No.912 of 1991. Once again the petitioner's husband had been set *ex parte*. The petitioner's husband had filed I.A.No.1022 of 1992 for condoning the delay of 360 days in filing the application to set aside *ex parte* decree in O.S.No.133 of 1998. This petition was dismissed as not pressed on the endorsement made by the learned counsel for the petitioner's husband and



consequently the application filed to set aside the ex parte preliminary decree was also dismissed. I.A.No.912 of 1991 which was filed for passing a final decree was also ordered on the basis of the endorsement made by the parties. Pursuant to the order of the final decree, execution proceedings in E.P.No.442 of 1993 was filed for delivery of possession and the parties have also taken delivery of their respective portions which includes the petitioner's husband. The documents pertaining to these proceedings, were sought to be marked to disprove the contention of the petitioner for rejecting the plaint on the ground of re-litigation.

5.Heard the learned counsel appearing on either side and perused the records.

6.The petition for rejecting plaint has been filed on the ground of re-litigation and abuse of process of Court. Re-litigation was on account of the fact that the petitioner's husband who was a party to the partition suit in O.S.No. 133 of 1998 where a final decree had been passed and each of the parties had been allotted their respective shares. Therefore, the present suit was nothing, but a case of re-litigation and an abuse of process of law. In order to prove this contention, the documents were sought to be marked. A perusal of the list of documents would indicate that the first two documents are only Court documents, which can definitely be received in evidence. However, the third document is adangal receipts which cannot be received.

7.In view of the above observation, this Civil revision petition is partly allowed and the order of the learned Additional Subordinate Judge, Karur, is confirmed with reference to the documents 1 and 2 and with reference to the document No.3, is set aside. The learned Additional Subordinate Judge, Karur, is directed to dispose of I.A.No.714 of 2016 as expeditiously as possible, not later than 30.04.2022. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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.

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



To

The Additional Subordinate Judge,
Karur.

+1 CC to M/s.K.SURESH, Advocate (SR-3055[F] dated
31/01/2022)

C.R.P. (MD)No.2360 of 2017

and

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