



C.R.P(MD).No.55 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.55 of 2023

Benjamin

... Petitioner/Petitioner/Plaintiff
Vs.

1.Thankamony

... 1st Respondents/1st Respondents/1st
Defendant

2.Kunchali Leela

... 2nd Respondent/2nd Respondent/2nd
Defendant

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records pertaining to the order and decretal order in the unnumbered execution petition in O.S.No.8 of 2001 dated 02.12.2022 on the file of the Principal District Munsif, Kuzhithurai and set aside the same.

For petitioner : Mr.M.P.Hariprasad
For Respondents : No representation

ORDER

The petitioner is aggrieved by the dismissal order passed in unnumbered second execution petition filed by him to execute the decree passed in O.S.No.8 of 2001. It appears that the petitioner had earlier filed E.P.No.109 of 2006, wherein delivery was also ordered on 03.11.2008 by 02.12.2008. However, during the course of the proceedings, execution



petition filed by the petitioner was dismissed on 16.09.2010. Thereafter, no steps were taken to revive the above execution petition, instead of the petitioner has filed fresh execution petition before the execution Court, namely, the Principal District Munsif Court, Kuzhithurai, on 15.10.2022. The case of the petitioner is that the petitioner could file the second execution petition within time under Article 136 of Limitation Act, due to outbreak the corona and indefinite the lockdown being enforced. In this connection, the learned counsel has drawn my attention to the decision of the Hon'ble Division Bench of this Court rendered in ***N.S.Karuppanna Gounder Vs., Nagammal*** reported in **1996 (II) CTC 1**. The specific reference was made in the said order in paragraph Nos.1, 2 and 3.

2. *Prima facie*, it appears that the second execution petition is maintainable, though the limitation could have expired otherwise under Article 136 of the Limitation Act is applied. Para 12 and 13 from the said decision read as follows:

“.....

12. As observed by Ratnam, J. in the decision reported in Mutha Pukhraj Ratnjee v. Ganesh Mull Adaji, 1983 (I) MLJ 443 it must be taken that the subsequent application cannot be said to be barred by limitation (paragraph 13). Civil Revision Petition Nos. 347 of 1977 and 709 of 1980 [Perumal v. Ramchandra Padayachi](#), 1981 (I) MLJ 65 were taken up on appeal to the Supreme Court by



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one of the revision petitioners in CRP No. 709 of 1980, challenging the correctness and validity of the order. The said SLP. No. 6438 of 1981 was dismissed by the Supreme Court on 28.8.1981. In view of the confirmation of the order passed by this Court in C.R.P. No. 709 of 1980 by the Supreme Court of India, it must be held that [Article 136](#) of the [Limitation Act](#) alone can be applied to the order for delivery passed earlier.

13. In view of the foregoing discussions, we hold that the conclusion reached by Sathar Sayeed, J. in [Devendra v. Badrabagu](#), ILR 1986 (2) Mad. 72 that the only Article that is applicable to an auction purchaser to take delivery of possession is [Article 134](#) of the [Limitation Act](#), does not lay down the law correctly. It is therefore overruled. We agree with the view expressed by Ratnam, J in the decision reported in **Mutha Pukhraj Ratnjee v. Ganesh Mull Adaji**, 1983 (1) MLJ 443 and Balasubrahmanyam, J in the decision reported in [Perumal v. Ramchandra Padayachi](#), 1981 (1) MLJ 65, which was confirmed by the Supreme Court in Special Leave Appeal (Civil) No. 6438 of 1981 (dated 26.8.1981). “

3. In view of the above, there shall be a direction to the learned Principal District Munsif, Kuzhithurai, to number the second execution petition filed by the petitioner. All the issues relating to the limitation are left open to be decided by the Court after hearing both the parties. Accordingly, this Civil Revision Petition disposed of. No cost.

13.04.2023

NCC : Yes/No

Index : Yes/No



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C.SARAVANAN,J.

Rmk

To

1.The Principal District Munsif, Kuzhithurai.

2.The Record Keeper,

V.R. Section,

Madurai Bench of Madras High Court,
Madurai.

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