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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No. 1918 of 2024

and

C.M.P(MD)No. 10880 of 2024

Sahayam

... Petitioner

Vs.

1. Melkio

2. Chinnappan

... Respondents

PRAYER: Civil Revision Petition filed under Article 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in I.A.No.36 of 2016 in I.A.No.897 of 2012 in O.S.No.131 of 2011 on the file of the District Munif Cum Judicial Magistrate Court, Cheranmahadevi, dated 17.11.2023.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.K.Shwathini, for
Mr.G.Prabhu Rajadurai, for R-1

JUDGEMENT

This Civil Revision Petition is filed to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in I.A.No.36 of 2016 in I.A.No.897



of 2012 in O.S.No.131 of 2011 on the file of the District Mufi Cum Judicial Magistrate Court, Cheranmahadevi, dated 17.11.2023.

2. The Plaintiff is the Civil Revision Petitioner and the Defendants are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

3. The suit in O.S.No.131 of 2011 was filed for declaration and recovery of possession. The Court below has issued notice to the defendants, but the defendants did not appear and hence, an ex parte decree was passed in favour of the plaintiff. Later on, to set aside the ex parte decree, dated 21.08.2012, I.A.No.897 of 2012 was filed and the same was dismissed for default on 08.07.2013. Against the same, the 2nd defendant has filed one more I.A.No.36 of 2016 to condone the delay of 605 days delay in filing the restoration petition. In the said restoration petition, a conditional order was passed on 06.02.2017 and the 2nd defendant was directed to pay a sum of Rs. 3,000/- as Costs. However, the 2nd defendant did not pay the same and thereafter, he had filed I.A.No.1 of 2022 seeking extension of time to pay the Costs and the same was allowed. Aggrieved over the same, the plaintiff is before this Court.



4. The contention of the plaintiff is that the defendant had not stated any proper reasons for the inordinate delay. Further the defendant was granted several opportunities but he had failed to avail the opportunity. Furthermore, the plaintiff has filed a suit in O.S.No.131 of 2011 for recovery of possession also. After obtaining the exparte decree, the owner of the property had handed over the possession of the property to the plaintiff. After getting possession the plaintiff had put up construction in the year 2013 itself. And as on date, there are change in the circumstances of the case. Since the plaintiff had put up construction in the year 2013, the earlier prayer of recovery of possession may not be a correct prayer and in such circumstances, the prayer ought to be amended. Hence, he seeks to amend the prayer.

5. The contention of the 2nd defendant is that the plaintiff has not taken possession as per law. The plaintiff did not file any execution petition. The land was a vacant land, subsequently in the year 2013, the plaintiff has put up construction which is against law. But the contention of the plaintiff is that original owner had handed over possession and he did object for putting up the construction. The 2nd defendant is a land broker and he is contesting the case. It is seen that the defendant also is seeking to contest the case after amending the pleadings, since the possession was not taken as per law.



6. Therefore, this Court is inclined to grant one more opportunity to both the plaintiffs and the defendants to prove their case after amending the pleadings before the Court below. Therefore, the parties are entitled to amend the pleadings and submit all the relevant documents and adduce evidence. All the issues are left open between the parties.

7. With these observations, this Civil Revision Petition is disposed of. Since the cost fixed by the Court below is meagre this Court is inclined to increase the same to Rs.10,000/-. The 2nd defendant is directed to pay a sum of Rs.10,000/- to the plaintiff, as Costs and the same shall be paid within a period of Four weeks from the date of receipt of this order. On such payment, the Learned District Munif Cum Judicial Magistrate, Cheranmahadevi, is directed to complete the suit in O.S.No.131 of 2011, within a period of 12 months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

05.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

Note: Issue a copy of order on 11.09.2024.



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To

1. The District Munif Cum Judicial Magistrate Court,
Cheranmahadevi.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Order made in
C.R.P(MD)No.1918 of 2024

05.09.2024