



C.R.P(MD)No.2700 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2700 of 2018

Rajagopal

... Petitioner /Petitioner/
Petitioner/Plaintiff

Vs.

1.Omana (Died)

2.Agatheeswaran (Died)

3.Senthil

4.The Special Officer,
Co-operative Sangam Building,
Thiagaraya Road,
Kodaikanal,
Dindigul District.

...Respondents/Respondents/
Respondents/Defendants

5.M.Rajesh

6.A.Uma

--- Proposed Respondents

(R5 & R6 are brought on record as legal heirs of the deceased R1 vide Court order, dated 12.04.2024 made in C.M.P(MD)Nos.3029 to 3031 of 2024)

7.A.Janaki

8.A.Arun Mani

9.A.Ravi Kumar



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10.A.Sneka Latha

11.A.Vinoth

... Proposed Respondents

(R7 to R11 are brought on record as Lrs of the deceased R2 vide Court order, dated 12.04.2024 in C.M.P(MD)Nos.3026 to 3028 of 2024)

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair order and decreetal order, dated 02.08.2018 passed in I.A.No.371 of 2016 in I.A.No.334 of 2012 in O.S.No.21 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Kodaikanal.

For Petitioner : Mr.M.R.Sreenivasan

For R3 : Mr.I.Suthakaran

For R2,R4,
R5-R11 : No Appearance

ORDER

The plaintiff in O.S.No.21 of 2004 on the file of District Munsif cum Judicial Magistrate, Kodaikanal is the revision petitioner.

2. The said suit has been filed for the relief of declaration that the documents, dated 27.04.1994 is non-est, null and void and not binding upon the plaintiff. A consequential prayer for declaration that the allotment order issued by the 4th defendant in favour of 2nd defendant is



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invalid and it was further prayed for directing the defendants to hand over possession of the property to the plaintiff. The suit was originally filed before Sub Court, Dindigul and numbered as O.S.No.310 of 1996 and later, it was transferred to the present Court and re-numbered as O.S.No.21 of 2004.

3. When the suit was posted for trial on 18.08.2011, the plaintiff had not appeared and it was dismissed for default on 02.12.2011. The plaintiff had filed I.A.No.334 of 2012 to condone the delay of 315 days in filing an application under Order 9 Rule 9 of Code of Civil Procedure. The said application was allowed by the trial Court on condition that the plaintiff has to deposit a sum of Rs.1,000/- (Rupees One Thousand only) on or before 25.11.2015. Since the cost was not paid, I.A.No.334 of 2012 got dismissed automatically.

4. The plaintiff thereafter had filed I.A.No.371 of 2016 to condone the delay of 365 days in filing an application to restore I.A.No.334 of 2012 which was dismissed for non-payment of cost. This application came to be dismissed by the trial Court on the ground that the plaintiff is attempting to drag on the proceedings. Challenging the same, the present revision petition has been filed.



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5. According to the revision petitioner appearing for the revision petitioner, he was not informed about the cost imposed by the trial Court in I.A.No.334 of 2012. Therefore, the cost could not be paid in time. He was under the impression that I.A.No.334 of 2012 has been allowed and the suit has been restored to file. Hence, only on a later date, he came to know that I.A.No.334 of 2012 has been dismissed. Hence, the present I.A.No.371 of 2016 has been filed.

6. Per contra, the learned counsel appearing for the respondents brought to the notice of the Court that the suit is of the year 1996 and the plaintiff is shying away from entering into the witness box and trying to drag on the proceedings. At every stage of the suit, there was some delay on the part of the plaintiff. Hence, the trial Court has rightly rejected the application. Hence, he prayed for sustaining the order passed by the trial Court.

7. I have carefully considered the submissions made on either side.

8. The respondents 1 and 2 are yet to be served. The 3rd respondent alone is the contesting party and therefore, eventhough service have not been effected on the respondents 1 and 2, this Court proceeds to pass orders on merits.



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9. Considering the fact that the suit is for declaration of title and permanent injunction and I.A.No.334 of 2012 has been allowed on payment of cost, this Court is inclined to allow I.A.No.371 of 2016 and to restore O.S.No.21 of 2004. However, considering the fact that the plaintiff was lethargic at every stage of the suit, this Court is inclined to impose a cost of Rs.5,000/- (Rupees Five Thousand only) on the plaintiff.

10. The order passed in I.A.No.371 of 2016 is set aside. The Civil Revision Petition stands **allowed** and the suit in O.S.No.21 of 2004 on the file of District Munsif cum Judicial Magistrate, Kodaikanal is restored to file on condition that the plaintiff pays a cost of Rs.5,000/- (Rupees Five Thousand only) to the learned counsel appearing for the 3rd respondent before this Court on or before **30.04.2024**. No costs.

11. Post on **30.04.2024** for reporting compliance.

18.04.2024

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

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To

- 1.The District Munsif cum Judicial Magistrate Court,
Kodaikanal.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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