

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.2.2009

Coram:

THE HONOURABLE MR.JUSTICE G.RAJASURIA

C.R.P. (PD) .No.1696 of 2004
and
C.M.P.No.15879 of 2004

V.K.Chenniappan ... Petitioner

vs.

1.Kannaiyan
2.Padmanabhan
3.Rajamanikam
4.Rajendran

... Respondents

This civil revision petition is filed against the order dated 14.3.2002 passed in memo dated 1.3.2002 in O.S.No.307 of 2001 by the Principal District Munsif, Erode.

For Petitioner : No appearance

For Respondents : No appearance

ORDER

Inveighing the order dated 14.3.2002 passed in memo dated 1.3.2002 in O.S.No.307 of 2001, by the Principal District Munsif, Erode, this civil revision petition is focussed.

2. Avoiding discursive discussion, I would like to pithily and precisely, tersely and briefly set out the germane facts as under:-

The revision petitioner/plaintiff filed the suit seeking the following reliefs as against the defendant, by name, Kannaiyan, son of Subramanian. It so happened that Vakalat was filed by one Advocate Thiru S.Devarajan, which bears the signature of one Sadayappan as the person who authorised the Advocate to file Vakalat on behalf of the defendant on the ground that the said Kannaiyan, whom the plaintiff cited as the defendant, in reality refers only to Sadayappan. However, the plaintiff took exception to such filing of Vakalat by Sadayappan. The plaintiff also filed memo, raising his

objections to the effect that the said Vakalat should not have been entertained because it was signed by Sadayappan, not by Kannaiyan. After hearing both sides, the lower Court passed the order on the memo directing the Advocate Commissioner, who was already appointed in the case, to visit the suit property and measure the same and note the physical features, in addition to ascertaining as to who is the owner of the suit property as per revenue records and also by taking the assistance of the Revenue Officials. Animadverting upon such order of the lower Court, this revision petition has been filed by the plaintiff on various grounds, inter alia thus:

the lower Court committed serious error in delegating its functions to the Commissioner to find out as to who is virtually the actual defendant in this case; the lower Court, instead of returning the Vakalat signed by one Sadayappan, simply committed error in passing such order.

3. Despite printing the names of counsel for both sides, no one appeared.

4. Pored and perused the relevant records, which would evince and evidence that in the plaint the defendant has been described as under:

"Kannaiyan, aged about 25 years, Son of Subramanian, Hindu, Checkkandadu, Moolakkarai Road, Nasiyanoor, Erode Taluk, Erode District."

However, the Vakalat filed by Advocate S.Devarajan bears the signature of Sadayappan. Presumably the contention of Sadayappan is that the plaintiff actually intended him alone as the defendant. Whereas the plaintiff would state that he intended one Kannaiyan. At this juncture, I would like to point out that ex facie and prima facie the order passed by the lower Court on the memo, is erroneous and liable to be set aside for the reason that this important dispute raised by the plaintiff should have been decided as the preliminary point and the lower Court should not have delegated impliedly its function in favour of the Commissioner. The relevant portion of the lower Court's order is extracted hereunder for ready reference:-

". . . . எனவே மேற்கூறியவாறு ஏற்கனவே தாவாச் சொத்தை பார்வையிட்டு நீதிமன்ற ஆணையர் திரு.எஸ்.சுரேஸ்குமார், பி.ஏ. பி.எல்.,வழக்கறிஞர் அவர்கள் உபயவாதிகள், உபயவாதிகளின் வழக்கறிஞர்கள், கிராம நிர்வாக அலுவலர், கண்ணையன், அல்லது

சடையப்பன் மற்றும் தக்க அலுவலர்களுடன் தாவாச் சொத்திற்குச் சென்று மேற்படி நபர்களின் முன்னிலையில் அந்த சொத்து சம்பந்தப்பட்ட ஆவணங்கள் யார் பெயரில் உள்ளது? பிரதிவாதியாக வாதி குறிப்பிட்டுள்ள நபர் யார் என்பது குறித்தும், பரிசீலித்து தாவாச் சொத்து அமைந்துள்ள அமைப்பு, மற்றும் அதன் அளவ, களையம் குறித்தும், தெளிவான அறிக்கை மற்றும் வரைபடத்தை தாக்கல் செய்தால்தான் இந்த வழக்கின் தீர்வுக்கு மிக மிக முக்கியமான அம்சம் என்று கருதி ஏற்கனவே நியமிக்கப்பட்ட நீதிமன்ற ஆணையர் வழக்கறிஞர் திரு.எஸ்.கரேஸ்குமார், பி.ஏ.,பி.ல.,அவர்கள் உபயவாதிகள், உபயவாதிகளின் வழக்கறிஞர்களின் கண்ணையன் அல்லது சடையப்பன், மற்றும் கிராம நிர்வாக அலுவலர் மற்றும் தக்க அதிகாரிகளின் முன்னிலையில் தாவாச் சொத்தை பார்வையிட்டு தாவாச் சொத்து ஆவணங்களில் யார் பெயரில் அமைந்துள்ளது பிரதிவாதியாக குறிப்பிட்டுள்ள நபர் யார் என்பது குறித்தும், வாதிக்கும், கண்ணையன், சடையப்பன் மற்றும் தாவாச் சொத்திற்கும் என்ன சம்பந்தம் என்பது குறித்தும் மிக மிக தெளிவான அறிக்கை மற்றும் வரைபடத்தை 12.4.2002 க்குள் தாக்கல் செய்ய வேண்டும் என்றும் " (emphasis supplied).

5. The underlined portions would clearly demonstrate and display that the lower Court misdirected itself in delegating its function to the Advocate Commissioner. Before venturing to pass any order in the interim applications, the lower Court should have asked the plaintiff and the said Sadayappan, to appear in person. Whereupon the plaintiff should have been called upon to identify as to whether the plaintiff intended the said Sadayappan as Kannaiyan in the suit and whether the said Sadayappan is the person who allegedly obstructed and caused disturbance to him, as averred in para 3 of the plaint. It is not as though the plaintiff was not aware of the identity of the defendant, because in paragraph 3 of the plaint, he would clearly aver that the defendant physically obstructed the plaintiff in using the suit cart track and in such a case the aforesaid procedure should have been followed by the lower Court and the entire matter would have been solved very easily. Mere mis-description or wrong description is not the decisive factor, but the reality should be seen. At this juncture my mind is redolent of the following maxim:

Falsa demonstratio non nocet, cum de corpore (Persona) Constat

which means false description does not injure or vitiate, provided, the thing or person intended has once been sufficiently described.

6. In view of the ratiocination adhered to supra, the order of the lower Court is set aside by allowing this revision. The lower Court is directed to deal with the preliminary point relating to identity of D1 as set out supra. No costs. Connected miscellaneous petition is closed.

Msk

Sd/
Asst.Registrar

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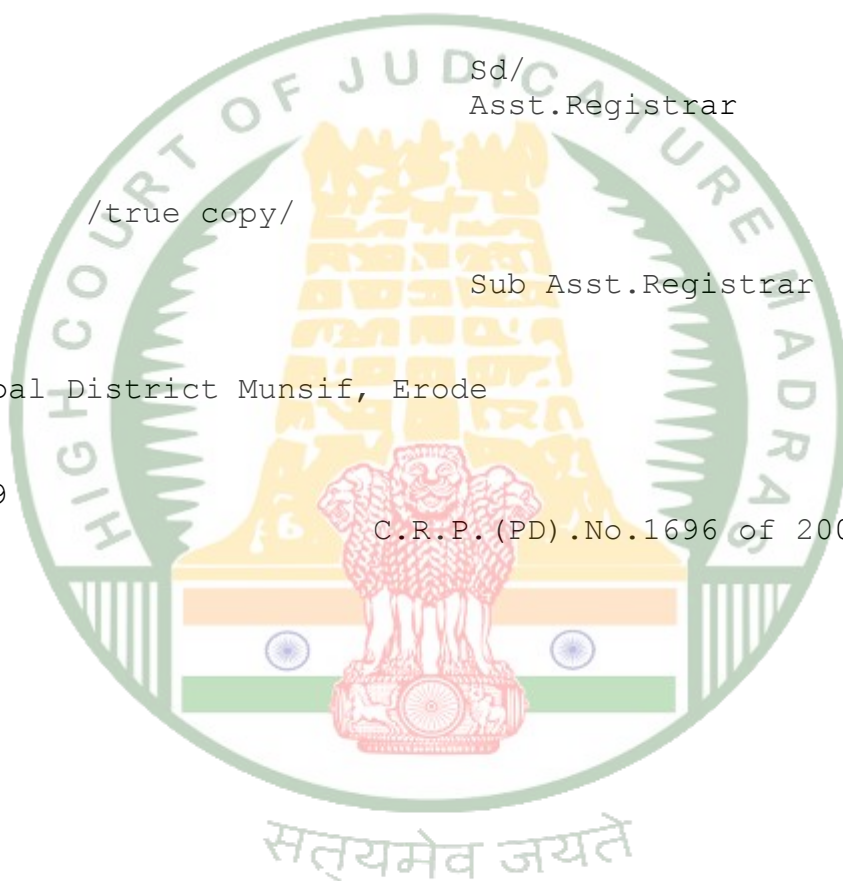
Sub Asst.Registrar

To

The Principal District Munsif, Erode

KA(CO)
SR/9.3.2009

C.R.P.(PD).No.1696 of 2004



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