

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

Present: Thiru. A.B.Naseer Ali, B.A.,B.L.,

Principal District Munsif, Cuddalore.

Additional District Munsif (FAC), Cuddalore

Friday, the 23rd day of February, 2018

E.A.No.8/2016 in E.A.No.2/2016 in E.P.No.274/2015 in

O.S.No.42/1987

Between

Arulmigu Vamanapureeswarar Temple,
Thirumanikuzhi,
Rep. by its Executive Officer.

... Petitioner/Petitioner/
Petitioner/D.H.

and

1. Dhanalakshmi

2. Adhi Sakthi Siva Shanmuga RajaRespondents/Respondents/
Respondents/J.Ds.

Counsels on Record:

For Petitioner : Mr. K. Muthukumar

Respondent 1 : Died

For Respondent 2 : Mr. S. Rammohan

This petition came before this Court on 15.02.2018 in the presence of learned counsel for the petitioner. Respondent side has been heard already. Upon perusal of records and having stood over for consideration till this day, this court delivers the following..

O R D E R.

Petition filed under Order 47 Rule 1 of CPC to review the conditional order passed in E.A.No.5/2016 dated 04.11.2016.

2. Gist of Petition:

a) The petitioner herein has filed the above E.A.No.5/2016 to restore the main E.P.No.274/2015 that was dismissed for default on 28.04.2016. The respondents have endorsed no counter in the said application. This court was pleased to pass a conditional order dated 04.11.2016 directing the petitioner to pay a sum of Rs.10,000/- to the legal aid and Rs.2,000/- to the respondents.

b) The said E.P.No.274/2015 has to be heard along with the connected suits namely O.S.No.334/2002 and O.S.No.191/2003 as per the direction of the Hon'ble District Court in Tr.O.P.No.8/2006. The dismissal for default was done by the court without perusing the order in Tr.O.P. There is no default on the part of the petitioner. In fact the arguments on the petitioner was advanced long before the Transferee court. Hence, in the interest of justice the conditional order passed by the court has to be reviewed and the cost imposed on the petitioner has to be waived.

3. **Gist of Counter filed by the 2nd Respondent:**

- a) The petition is devoid of merits and liable to be dismissed *in limini*.
- b) The petition is not maintainable under law or facts. The petitioner has filed the review petition to review the order passed by this court on 28.04.2016 in E.A.5/2016 which was filed to restore the execution petition whereby directing the petitioner to pay a sum of Rs.10,000/- to the legal aid and Rs.2,000/- to the respondents. The order passed by this court is revisable order and hence the petitioner has to prefer revision before the Hon'ble High Court of Madras. This court has no power to review its own order passed by this court.
- c) The petitioner has filed the main E.P.15/2003 for delivery of the property as against one Dhanalakshmi and one Adhisakthi Sivamanickavel. This respondent is not a party to the execution petition. Now, the petitioner has filed this petition against this respondent who is not at all party to the execution petition. But the petitioner has arrayed this respondent as party to

this petition. Hence, the petition filed by the petitioner has to be rejected.

d) The 1st respondent namely Dhanalakshmi died long back. Without impleading the legal heirs of Dhanalakshmi, further proceedings in the execution petition will not arise. The petitioner has to take steps to implead the legal heirs of deceased 1st respondent. On the same ground the petition filed by the petitioner is liable to be dismissed *in limine*.

e) It is, therefore, prayed that the petition may be dismissed with cost.

Point for consideration is whether the application is to be allowed or not.

4. Point for consideration is whether the application is to be allowed or not.

5. No witness was examined and no document was marked on both sides.

6. **Point:**

a) This petition has been filed to review the order passed on 04.11.2016 on the allegation that an order for dismissal cannot be passed since the E.P. will have to be taken along with O.S.No.334/2002 and O.S.No.191/2003 as per the direction of the Hon'ble District Court in Tr.O.P.No.8/2006. Even though the above such suits are taken together, just because of such direction, it cannot be expected that dismissal order for default shall not be passed. After considering the attitude of the petitioner cost has been imposed as a condition precedent to allow the petition. A review application cannot be filed unless there is apparent error on the face of record. No such error is shown. Hence, this petition is not maintainable. Accordingly, it is dismissed.

In the result, this petition is dismissed. However, there is no order as to costs.

Dictated to Steno-typist, transcribed by her and corrected and pronounced by me in open court, on this day, the 23rd day of February, 2018.

Principal District Munsif,
Additional District Munsif, (FAC)
Cuddalore.

List of witnesses and documents on both sides : - Nil -

Principal District Munsif,
Additional District Munsif, (FAC)
Cuddalore.