

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26 - 06 - 2015

Coram

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 486 of 2015

and

M.P. No. 1 of 2015

V. Palanisamy ... Appellant/1stRespondent
Decree holder/Plaintiff
vs.

Ramasamy (Died)

1. R. Ananthi
2. Minor R. Santhiya
3. Minor R. Sasikumar
(Minors 2 & 3 represented
by mother / guardian 1st respondent)
4. Arumuga Aasari ... Respondents 1-3/Appellants/
Petitioners

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 20.01.2014 in A.S. No.106 of 2013 on the file of the Court of III Additional Subordinate Judge, Coimbatore, reversing the order and decree dated 26.04.2013 made in E.A. No.146 of 2009 in E.P.R. No. 4 of 2009 in O.S. No. 1549 of 2003 on the file of the Principal District Munsif, Coimbatore.

For Appellant : Mr. K. Gangadaran

For Respondents : Mr. K.S. Karthik Raja

JUDGMENT

This second appeal is filed by the plaintiff / decree holder against the judgement and decree dated 20.01.2014 passed by the III Additional Subordinate Judge, Coimbatore, in A.S. No. 106 of 2013 wherein and by which the order and decree dated 26.04.2013 made in E.A. No.146 of 2009 in E.P.R. No. 4 of 2009 in O.S. No. 1549 of 2003

on the file of the Principal District Munsif, Coimbatore, were reversed allowing the First Appeal at the instance of the legal heirs of the Obstructor.

2. According to the plaintiff, who claims to be the absolute owner of the suit property by inheritance, the defendant was put in possession on a monthly rent of Rs.350/- during the lifetime of his father. It is stated that after the death of his father, he was collecting the rent till the month of December 2002 and that he committed default in payment of rent from January 2003 to August 2003. The further case of the plaintiff is that despite several demands, the defendant did not pay the rent and even the legal notice issued by him on 15.02.2003 was returned as refused. Hence, the plaintiff filed the suit for eviction of the defendant.

3. Before the trial Court, since the defendant did not turn up, he was set ex parte and the suit was decreed.

4. From the materials available on record, it is seen that the plaintiff / decree holder filed E.P.R. No. 4 of 2009 before the Court of Principal District Munsif, Coimbatore, in which one V. Ramasamy, brother of the plaintiff / decree holder filed obstruction petition in E.A. No. 146 of 2009 under Order 21 Rules 97 and 98 CPC to declare the judgment and decree passed in O.S. No. 1549 of 2003 as void and not enforceable. It is also seen from the records that though the E.A. was filed by the Obstructor, he died on 09.01.2013 and when the matter was called on 26.4.2013, since there was no representation on his behalf, the E.A. was dismissed as infructuous. As against the said order, A.S. No. 106 of 2013 was filed by the legal heirs of the deceased Obstructor before the III Additional Subordinate Judge, Coimbatore. The Lower Appellate Court, on elaborate consideration of the facts, allowed the appeal setting aside the order dated 26.4.2013 passed in E.A. No. 146 of 2009. Against the said order, the present Second Appeal has been preferred by the plaintiff / decree holder.

5. Heard the learned counsel appearing for the parties and perused the records.

6. A perusal of the records would show that the Obstructor, who is none other than the brother of the plaintiff, claimed to be the owner of the suit property by virtue of the Will dated 09.8.1989 executed by his father and he also claimed to be in possession and enjoyment of the suit property by paying Property Tax, Water Tax and Electricity Charges. On the other hand, the plaintiff / decree holder, by virtue of the decree passed in O.S. No. 1549 of 2003, tried to evict the second respondent / judgment debtor.

7. Admittedly, a memo was filed on 18.4.2013 stating that the objector / first respondent herein died on 09.01.2013 and the E.A. was posted to 26.4.2013 on which day, the E.A. was dismissed by the trial Court stating that no steps were taken despite sufficient time granted for the same. The Lower Appellate Court found that an application under Section 5 of the Limitation Act was filed to condone the delay in filing petition to bring on record the legal heirs. As the memo informing the death of the Obstructor was filed only on 18.4.2013, it was adjourned to 26.4.2013 for taking steps. It is seen that on the first date fixed for taking steps, the E.A. was dismissed by the trial Court and that was set aside by the Lower Appellate Court as the legal heirs have to be given an opportunity to prosecute the matter further.

8. The point involved in this Appeal is whether the death of the claim petitioner will bring the execution proceedings to an end.

9. The fact remains that the Execution Petition is against the tenant for delivery of possession. Since the legal heirs of the claim petitioner have got right to proceed by filing an application under Order 21 Rules 97 and 98 CPC, the Lower Appellate Court has rightly provided an opportunity for them to contest the matter on merits. Further more, as the respondents were not party to the original suit, the decree will not bind them. As such, the finding of the Lower Appellate Court does not suffer from any infirmity or irregularity as the delay was condoned by providing an opportunity for the legal heirs to proceed on merits. The appellant cannot be aggrieved as his right or title has not been lost by the judgment passed by the Lower Appellate Court. The point is answered accordingly.

In fine, the Second Appeal fails and the same stands dismissed confirming the judgment and decree dated 20.01.2014 passed by the learned III Additional Subordinate Judge, Coimbatore in A.S. No. 106 of 2013, reversing the order and decree dated 26.04.2013 made in E.A. No.146 of 2009 in E.P.R. No. 4 of 2009 in O.S. No. 1549 of 2003 on the file of the Principal District Munsif, Coimbatore. However, in the circumstances of the case, there shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CSV)
Dated: 27/07/2015

True Copy

Sub-Assistant Registrar

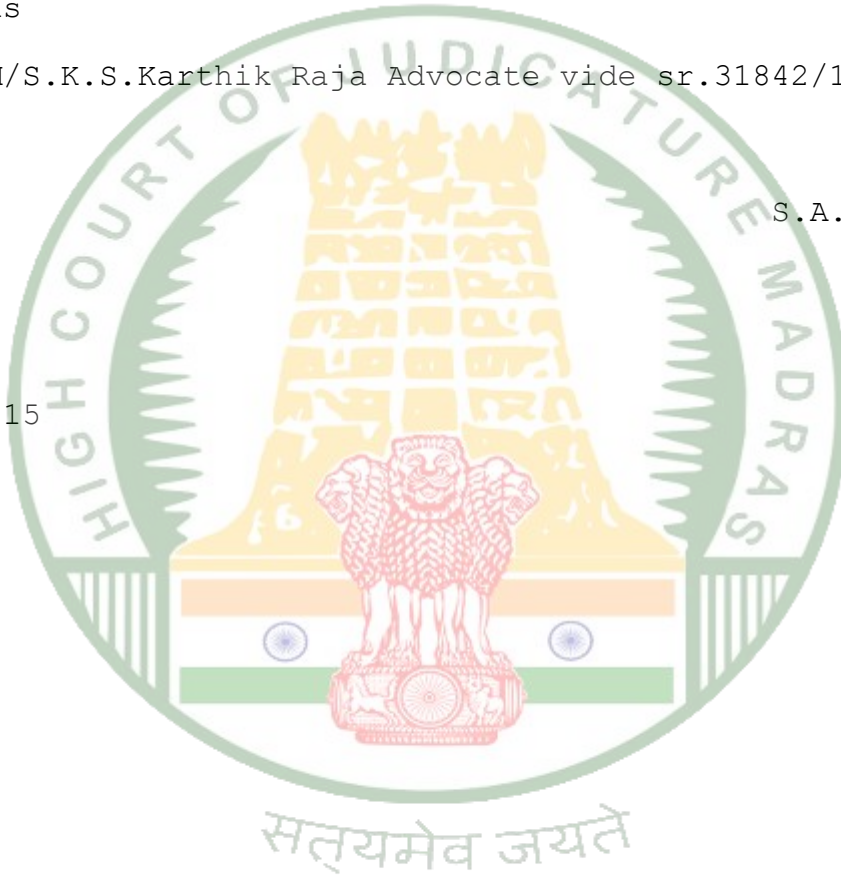
To

1. III Additional Subordinate Judge
Coimbatore
2. Principal District Munsif
Coimbatore
3. The Section Officer
V.R. Section
High Court
Madras

+1 cc to M/S.K.S.Karthik Raja Advocate vide sr.31842/15

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aa28/07/2015



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