

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.1341 of 2013 and

M.P.Nos.1 and 2 of 2013

and CMP.No.4093 of 2016

D.Shanthi

.. Appellant/Appellant/
Plaintiff

Vs.

St.Thomas Mount-Cum-
Pallavaram Cantonment Board,
Represented by the
Executive Officer,
Office at Butt Road,
St. Thomas Mount,
Chennai - 600 016.

.. Respondent/Respondent
Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree, dated 21.12.2012 and made in A.S.No.16 of 2010 on the file of learned Subordinate Judge, Tambaram confirming the Judgment and decree, dated 31.08.2009 and made in O.S.No.882 of 1997 on the file of learned Additional District Munsif, Alandur.

For the petitioner : Mr.Uma Shankar
for Mr.S.Balasubramanian

For the Respondent : Mr.C.Mohan
for M/s King & Partridge

JUDGEMENT

Having lost his suit before the Courts below, the plaintiff stands before this Court as an appellant with this Second Appeal.

2. The defendant in the suit in O.S.No.882 of 1997 is the respondent herein. It is manifested from the records that the appellant has filed the above suit in O.S.No.882 of 1997 on the file of District Munsif Court, Alandur as against the respondent

herein seeking the relief of granting permanent injunction restraining the defendant or his men from disturbing or obstructing or interfering in any manner with the appellant's peaceful possession and enjoyment of the suit property except under due process of law.

3. The suit was resisted by the defendant effectively and ultimately, on evaluation of evidences both oral and documentary, the District Munsif, Alandur had proceeded to dismiss the suit on 31.8.2009. Challenging the correctness of the judgment of dismissal, the appellant had approached the Sub Court, Tambaram by way of an appeal A.S.No.16 of 2010. That appeal was also dismissed on 21.12.2012 confirming the judgment and decree of the trial Court. Having been aggrieved by the judgment and decree dated 21.12.2012 and made in A.S.No.16 of 2010, the appellant being the plaintiff stands before this Court with this second appeal.

4. When the appeal is taken up for hearing today, the appellant has filed an affidavit, whereunder, she has undertaken to vacate the premises in question unconditionally on or before 31.10.2016.

5. The learned counsel appearing for the respondent has submitted that as per the instruction of the respondent Department, he has submitted a xerox copy of the paper signed by the Chief Executive Officer, St. Thomas Mount, Pallavaram, wherein, the respondent Department has stated the following four difficulties in granting time to the appellant;

- (i) the appellant is not living at the said location but using the same for commercial purpose;
- (ii) there is no licence fee collected from the appellant since 1991, though the appellant has been under illegal possession of the said land. This has caused financial loss to the Government;
- (3) the said land is highly prone for encroachment;
- (4) There is a lot of congestion in the given locality due to non availability of parking space in that area. The Cantonment Board has resolved to use the said land for parking purpose and has outsourced to a private contractor the responsibility for maintenance of parking area and collection of parking fees. To that effect, the contract has been awarded to one Mr. Rajasekar by following due procedures and the contract comes into effect from 1st April 2016 ;

and therefore the learned counsel has submitted that it is not possible to give the appellant any more time to occupy the Government land unauthorisedly as the licence period was expired in the year 1991 itself and thereafter the possession of the suit property with the appellant itself is an unauthorised one and she

is liable to be evicted immediately.

6. It is also revealed that the total area is a vacant land measuring 24.510 acres and the exact area which was given under licence to the appellant was 3500 sq.ft. In this connection, this Court finds from the representation made by the learned counsel for the respondent that the contract has been awarded already to one Mr.Rajasekar, who is going to take possession of property on and from 1.4.2016 as per the contract. But the learned counsel for the appellant has submitted that the appellant undertakes to vacate the premises in question unconditionally on or before 31.10.2016.

7. The submission made by the learned counsel for the appellant is distinguishable, because already the contract was awarded to one Mr.Rajasekar and it is going to take effect from 1.4.2016. Further in the interest of justice and on considering the submission made by the learned counsel for appellant and learned counsel appearing for the respondent, this Court finds that the time for vacating premises may be extended up to 31.5.2016.

8. The above conclusion is taken by this court based on the affidavit filed by the appellant voluntarily giving an undertaking that she would vacate the premises on or before 31.10.2016. Despite the undertaking given by the appellant, if the Court finds that the appellant is failed to vacate the premises on or before 31.5.2016, the respondent is at liberty to vacate the appellant under the Public premises (Vacation of Unauthorised occupants) Act 1971. It is also brought to the notice of this Court that action as against the appellant has already been initiated by the respondent and an appropriate order was also already passed.

9. In the result, the Second Appeal is disposed of with a direction to the appellant to vacate the suit premises on or before 31.5.2016, failing which, the respondent is at liberty to vacate her under the provisions of The Public Premises (Eviction of Unauthorised Occupants) Act 1971. No costs. Consequently, the connected miscellaneous petitions are closed.

WEB COPY

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

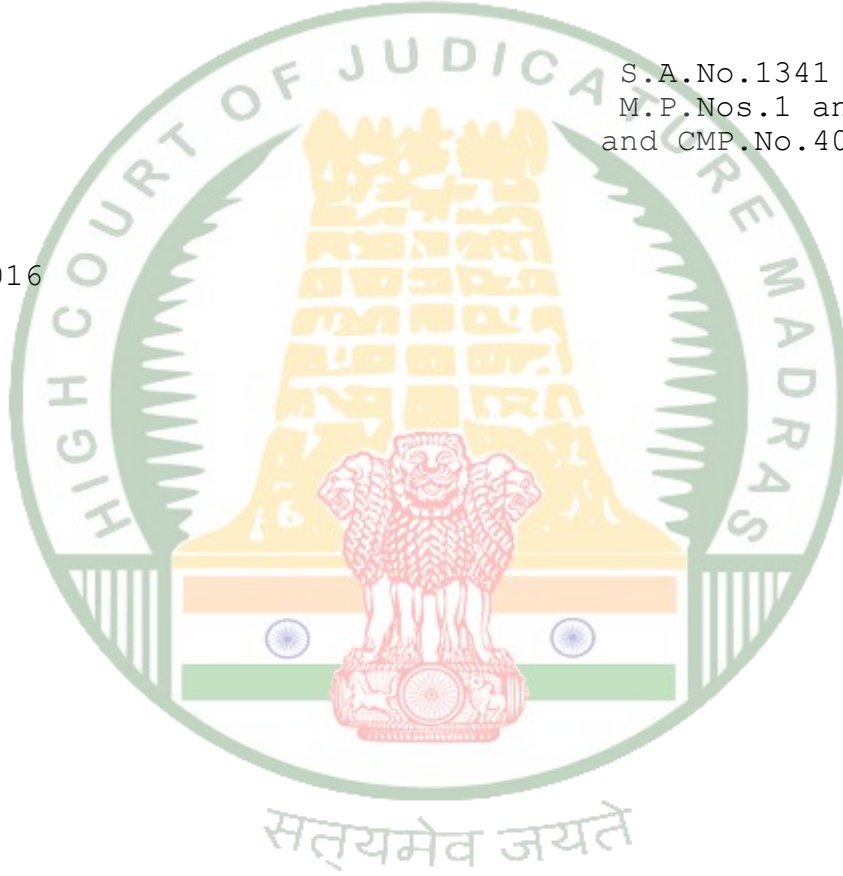
To

1. The Subordinate Court,
Tambaram.
2. The Additional District Munsif,
Alandur.

+1 cc to M/s.King & Partridge Advocates vide sr.18628

S.A.No.1341 of 2013 and
M.P.Nos.1 and 2 of 2013
and CMP.No.4093 of 2016

aa03/05/2016



WEB COPY