

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.111 of 2016
and
C.M.P.No.1402 of 2016

N.Manoj ...Appellant/3rd Party

v.

1.E.Kandasamy

2.Ms.Thilagam ... Respondents 1 & 2/Petitioners

3.The Revenue Tahsildar,
Attur Division, Attur,
Salem District. ... 3rd Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order of this Court dated 20.04.2015 made in W.P.No.11278 of 2015.

For Appellant : Mr.S.Ramesh

For Respondents 1 and 2 : Mr.K.Selvaraj

For 3rd Respondent : Mrs.Sri Jayanthi

Special Govt. Pleader

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellant has focussed the instant Writ Appeal as against the order dated 20.04.2015 in W.P.No.11278 of 2015 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order in W.P.No.11278 of 2015 (filed by the Petitioners/Respondents 1 and 2 herein), on 20.04.2015, at paragraph 4, had observed the following:

"4.This Court, taking into consideration the limited scope of the prayer sought for by the petitioners and without going into the merits of the application, directs the respondent to consider the application dated 03.02.2015 submitted by the petitioners, on merits and in accordance with law, after putting on notice the persons concerned, and pass orders as expeditiously as possible and not later than six weeks from the date of receipt of a copy of this order and communicate the decision to the petitioners as well as to the persons concerned."

and accordingly, disposed of the Writ Petition.

3.At the outset, it is significantly to be pointed out that in M.P. No.1 of 2015 filed by the Petitioner/Appellant has granted leave/ permission (for the reasons assigned therein) on 01.02.2016 to prefer an Appeal against the final order dated 20.04.2015 in W.P.No.11278 of 2015 passed by the Learned Single Judge.

4.The main grievance of the Appellant is that the Respondents 1 and 2 (Petitioners in W.P.No.11278 of 2015) had obtained directions from the Learned Single Judge on 20.04.2015 without making the Appellant as a party in relation to the Appellant's property and also they had suppressed the pendency of the Civil Suit in O.S.No.335 of 2012 on the file of the trial Court pertaining to the very same properties. As such, the impugned order dated 20.04.2015 in W.P.No.11278 of 2015 passed by the Learned Single Judge is liable to be interfered with.

5.According to the Learned Counsel for the Appellant, in the first representation dated 27.11.2012, the Respondents 1 and 2 had mentioned about the right, title and possession claimed by the Appellant. But, in the Statutory Application dated 03.02.2015, there is absolutely no reference to the claim of the Appellant and an innocuous relief as sought for subdivision and grant of patta.

6.The core contention advanced on behalf of the Appellant is that the Respondents 1 and 2 (Petitioners), with a view to deny the rights of the Appellant and create records, had purposefully not averred anything about the pendency of the suit in O.S.No.335 of 2012 on the file of the trial Court in the affidavit filed along with the Writ Petition and also, in the representation submitted before the 3rd Respondent.

7.Continuing further, it is represented on behalf of the Appellant that the Revenue Divisional Officer is a proper and necessary party, who has not shown as a party in W.P.No.11278 of

2015 filed by the Respondents 1 and 2 (as Petitioners) and further, the Settlers of the Appellant, who had settled the property in question in favour of the Appellant, were not competent to give consent to the Respondents 1 and 2 herein, as they had divested the right, title, ownership and possession of the property while executing and registering the Settlement Deed in favour of the Appellant. Besides that, in relation to the Settlement Deeds, the disputes are pending between the parties.

8. Inasmuch as the Appellant's grievance mainly centers around the fact that he was not made as a party to the Writ Petition in W.P.No.11278 of 2015 (filed by the Respondents 1 and 2/Petitioners) and also that, the Respondents 1 and 2, in the affidavit (sworn by the 1st Respondent) in W.P.No.11278 of 2015, had not whispered anything about the pendency of the suit in O.S.No.335 of 2012 filed by the Appellant on the file of the trial Court, this Court directs the 3rd Respondent to issue notice to the Appellant herein and hear his written objections/oral objections as the case may be and to pass a speaking order on merits in a dispassionate manner (while considering the Statutory Application of the Respondents 1 and 2/Petitioners dated 03.02.2015) of course after issuing necessary notices to the interested persons, if any, in the subject matter in issue, within a period of four weeks from the date of receipt of a copy of this Judgment.

9. With the aforesaid observations and directions, the Writ Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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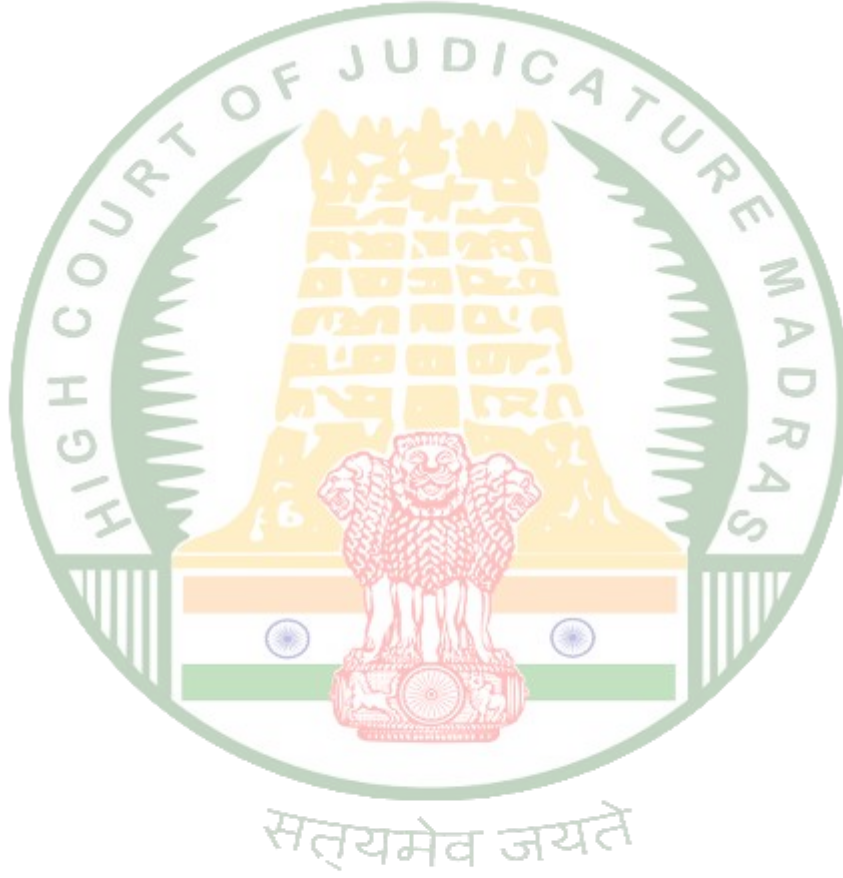
To

The Revenue Tahsildar,
Attur Division, Attur,
Salem District.

+ 3 ccs to Mr.S. Ramesh, Advocate SR.6631 & 6427

W.A.No.111 of 2016

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