

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.Nos.344 & 744 of 2016
and
C.M.P.Nos.2597 & 5998 of 2016

Rajakamalanathan ... Appellant in CMA.No.344/2016
Respondent in CMA.No.744/2016/
Plaintiff

Vs.

S.Balu ... Respondent in CMA.No.344/2016
Appellant in CMA.No.744/2016/
Defendant

Civil Miscellaneous Appeals filed under order 43 Rule 1 (u) of Civil Procedure Code to set aside the order of remand made in judgment and Decree dated 17.11.2015 made in A.S.No.30 Of 2013 on the file of the learned Additional District Court, Namakkal reversing the Judgment and decree dated 10.04.2013 made in O.S.No.390 of 2008 on the file of Sub Court, Tiruchengode.

For Appellant in CMA.No.344/2016 &
for Respondent in CMA.No.744/2016 : Mr.N.Manokaran

For Appellant in CMA.No.744/2016 &
for Respondent in CMA.No.344/2016 : Ms.S.Hemalatha

J U D G M E N T

These Civil Miscellaneous Appeals are filed against the order of remand made by the Additional District Judge, Namakkal, in A.S.No.30/2013 dated 17.11.2015. The proceedings arise out of the Suit in O.S.No.390/2008. The said suit came to be filed under the following factual background.

2. The plaintiff had filed a suit in O.S.No.560/1996 against one P.Saravanan for declaration of his title and for consequential injunction restraining the said Saravanan, his men and agents from interfering with his possession of the suit property. The plaintiff claiming that he has purchased

the property under a sale deed dated 21.04.1993 from one Saraswathy and her daughters Murugananthi and Nithya, for valuable consideration, filed the suit for declaration of his title and injunction against one Saravanan, who had claimed that he had purchased the property from the same persons namely Saraswathy and her daughters Murugananthi and Nithya on 13.08.1996. The said suit in O.S.No.560/1996 was decreed ex parte in favour of the plaintiff on 17.07.1998.

3. According to the plaintiff, after suffering a decree, the said Saravanan had re-conveyed the property to his vendors namely Saraswathy, Murugananthi and Nithya on 20.02.2001. On 25.07.2007, the said Saraswathy and her daughters had again conveyed the property to the present defendant Balu. Contending that his title has already been declared in O.S.No.560/1996, the plaintiff prayed for a negative declaration that the defendant has no right or title over the suit property and sought an injunction restraining him from interfering with the plaintiff's possession of the suit property. The suit was resisted by the defendants raising various defence. The trial Court, after recording evidence found that the vendors of the plaintiff, having sold the property even in the year 1993 to the plaintiff had no right to convey the same to Saravanan. Therefore, Saravanan's re-conveyance in the year 2001 to the vendors of the plaintiff as well as subsequent sale by the vendors of the plaintiff in favour of the defendant in the year 2007, will not offer any right on the defendant. On the aforesaid finding the trial Judge decreed the suit as prayed for.

4. Aggrieved by the same, the defendant filed an appeal in A.S.No.30/2013. In the Appellate Court, a plea was taken by the defendant/appellant that the plaintiff cannot maintain the present suit for a negative declaration as prayed for. He must have sought for a positive declaration of title by paying Court fee under Section 25(b) of Tamil Nadu Court Fees and Suits Valuation Act 1955. Reliance was also placed on the judgment of this Court in R.N.Shanmugavadivel and another Vs. R.N.Myilsami and others, reported in 2010 (3) MWN (civil) 633. In the said decision, Hon'ble Mr. Justice M.Jeyapaul had held that the plaintiff ought to have sought a positive declaration of title. Since he has sought to establish his title over the property, under Section 34 of the Specific Relief Act, 1963, he should have sought for positive declaration by paying Court fee under Section 25(b) of the Tamil Nadu Court fees and Suit Valuation Act. The learned Judge has also given examples of cases where a party can seek a negative declaration in para 10 of the said judgment, which reads as follows:

"10. In a case where a Bank guarantee is sought to be invoked, the party aggrieved can file a suit for declaration that the defendants are not entitled to invoke the Bank guarantee against the plaintiff. In a case where a fraudulent decree

was obtained as against the plaintiff in an earlier litigation, such a Plaintiff can see for a negative declaratory relief that such a decree obtained fraudulently as against the plaintiff is not binding upon him. The plaintiff and the defendants, can very well see for a negative declaratory relief to the effect that the compromise projected by the defendant is not binding upon the plaintiff. In a case where the termination from service is challenged by the employee, he can very well seek for a negative declaratory relief that the Defendant has no authority to terminate him from service.

11. In all the above sample cases, it appears that the negative prayer has a direct bearing or impact on the Plaintiff. The relief sought for negatively plaintiff. But in the present case, the negative relief sought for hangs in the balance and it does not impact directly on the Plaintiffs. Therefore, in such circumstances the Plaintiffs cannot seek for a negative relief. Further, such a negative relief even if granted is not at all found to be a workable one, in as much as it does not bind the Plaintiffs and the Defendants in the Suit. Further, the Plaintiffs cannot usurp the title to the property without seeking for property declaration of his right and title to the property. "

Relying upon the above said judgment, the learned Additional District Judge, Namakkal held that the plaintiff ought to have sought a positive prayer declaration and the suit filed for negative prayer cannot be maintained. Therefore, the learned District Judge remanded the matter to the trial Court to enable the plaintiff to seek positive declaration of title and consequential injunction. Thus, this order of remand has been challenged by both the appellant as well as by the respondent in CMA.Nos.344 and 744 of 2017.

5. Heard Mr.N.Manokaran, learned Counsel for the appellant in CMA.No.344 of 2016 and for the respondent in CMA.No.744 of 2016 and Ms.S.Hemalatha, who appears for the appellant in CMA.No.744 of 2016 and respondent in CMA.No.344 of 2016.

6. Mr.N.Manokaran, learned counsel appearing for the appellant in CMA.No.344 of 2016, vehemently contended that the learned appellate judge was not right in concluding that the suit for negative declaration is not maintainable. According to him, the present suit would fall under the sample cases cited by this Court in the decision reported in 2010 (3) MWN (civil) 633 (cited supra).

7. I find much force in the contention of the learned counsel for the appellant in C.M.A. No. 344 of 2016. As

already pointed out, the plaintiff had, in fact, sought for declaration of his title against Saravanan namely the purchaser from his vendor even in O.S.No.560/1996 and said suit had been decreed by the Court even as early as on 17.07.1998. It is thereafter the purchaser namely Saravanan re-conveyed the property to his vendors in the year 2001, who, in turn, conveyed the property to the present defendant. In such circumstances, it is needless to say that the defendant in the earlier suit namely Saravanan and the vendors of the defendant as well as the defendant in the present suit will be bound by the declaratory decree granted in O.S.No.560/1996. Therefore, it is not necessary for the plaintiff to again seek a declaration of his title over the suit property. Therefore, the Appellate Court was not right in holding that the plaintiff should have sought for positive declaration of his title. Once the plaintiff's title had already been declared by the competent Civil Court as against the predecessor in interest of the defendant, it is wholly unnecessary for the plaintiff to again seek declaration of his title as such a conclusion would lead to anomalous result. Therefore, I am of the considered opinion that the present case would fall within the sample cases enumerated by the Hon'ble Justice Mr.M.Jeyapaul in R.N.Shanmugavadivel and another Vs. R.N.Myilsami and others, reported in 2010 (3) MWN (civil) 633. Hence, I do not find that the learned appellate Judge was right in remanding the matter for fresh consideration by the trial Court with a direction to plaintiff to amend the plaint. The order of remand is, therefore, set aside and these appeals are allowed.

8. Mr.N.Manoharan, learned counsel for the appellant in C.M.A. No. 344 of 2016 would submit that the appeal be transferred to some other Court, since the same Presiding Officer is continuing in the said Court even now and relied upon the judgment of the Hon'ble Supreme Court in Kanaklata Vs. State (NCT of Delhi) and others reported in 2015 (6) SCC 617 contending that the very fact that the learned District Court Judge has taken a particular view against the appellant in CMA.No.344 of 2016 would lead to reasonable apprehension of bias on his part. In the above said judgement of the Hon'ble Supreme Court, the Hon'ble Supreme Court has pointed out that when the trial Court while discharging the accused under the SC/ST Act, had made certain observations about the alleged misuse of provisions of the said Act, the parties will be justified in entertaining a reasonable apprehension of bias in going before the same Presiding Officer. The learned Appellate Judge had also expressed opinion about the maintainability of the suit and hence, Mr.N.Manoharan, the learned Counsel for the appellant had expressed reasonable apprehension and requested that the appeal may be heard by a different officer. Since the said request is reasonable, AS.No.30/2013 stands transferred to the file of the Principal District Judge, Namakkal, who will dispose of the same on merits. Considering the fact that the appeal is pending from

the year 1996, the learned Principal District Judge is directed to dispose of the appeal within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

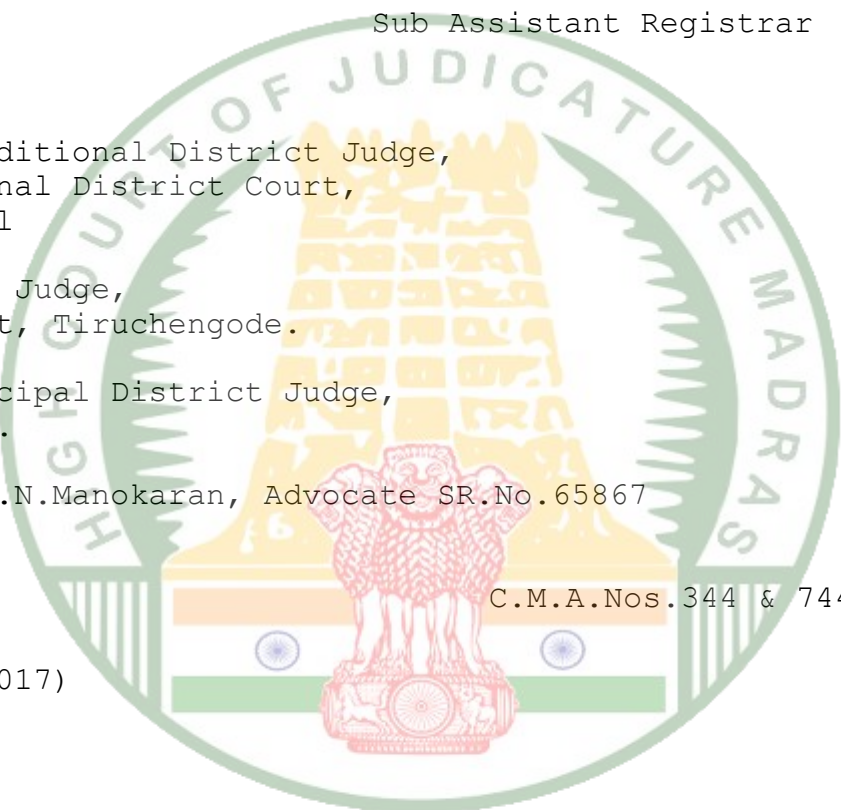
To

1. The Additional District Judge,
Additional District Court,
Namakkal
2. The Sub Judge,
SubCourt, Tiruchengode.
- 3.The Principal District Judge,
Namakkal.

+1cc to Mr.N.Manokaran, Advocate SR.No.65867

C.M.A.Nos.344 & 744 of 2016

NM(CO)
GN(28/10/2017)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The lion capital is flanked by two red horses. Below the lion capital is a red wheel. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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