

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2017

Coram

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.2460 of 2017 &
C.M.P.No.13416 of 2017

1.K.Sundarraaj
2.Amarjyothi ... Appellants/Petitioners/Plaintiffs

v.

1.Rajamma
2.K.Devendran
3.Girija @ Padmavathi
4.Sampathlakshmi
5.The District Collector
Collectorate, Krishnagiri

... Respondents/Respondents/Defendants

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code against the Judgment and decree order dated 28.04.2017 passed in I.A.No.1 of 2017 in O.S.No.83 of 2015 on the file of Additional District Judge, Krishnagiri.

For Appellants : Mr.Immanuel

For Respondents : Mr.C.Ashok Kumar - for R1, R3 & R4
Mr.K.A.Mariappan - for R2

J U D G M E N T

Challenging the fair and decreetal order passed in I.A.No.1 of 2017 in O.S.No.83 of 2015 on the file of Additional District Court, Krishnagiri, the plaintiffs have filed the above Civil Miscellaneous Appeal.

2.1 Originally, the plaintiff filed the suit in O.S.No.35 of 2012 on the file of Sub Court, Hosur, for permanent injunction. The respondents 3 and 4 filed another suit in O.S.No.86 of 2011 on the file of District Court, Krishnagiri for partition and other reliefs. Subsequently, the respondents 3 and 4 have filed a Transfer Original Petition in Tr.O.P.No.68 of 2013 on the file of Additional District Court, Krishnagiri to transfer the suit in O.S.No.35 of 2012 pending on the file of Sub Court, Hosur to the file of Additional District Court, Krishnagiri to be tried along with O.S.No.86 of 2011.

2.2 The Principal District Court, Hosur, allowed the Tr.O.P.No.68 of 2013 and transferred the suit in O.S.No.35 of 2012 to the file of Additional District Court, Krishnagiri to be tried along with O.S.No.86 of 2011. Thereafter, the suit in O.S.No.35 of 2012 was renumbered before the Additional District Court, Krishnagiri as O.S.No.83 of 2015.

2.3 While so, after the formation of Additional District Court, Hosur, by an administrative order of the District Judge, the suit in O.S.No.86 of 2011 was transferred to the file of Additional District Court, Hosur. However, the connected suit in O.S.No.83 of 2015 was not transferred to the file of Additional District Court, Hosur. Therefore, when the suit in O.S.No.83 of 2015 was posted for trial before the Additional District Court, Krishnagiri on 22.02.2016, the appellants filed a memo stating that the District Court had already ordered joint trial of the suits in O.S.Nos.86 of 2011 and 83 of 2015 and therefore, the suit in O.S.No.83 of 2015 should also be transferred to the file of Additional District Court, Hosur to be tried along with O.S.No.86 of 2011. However, the Additional District Judge, Krishnagiri, dismissed the suit in O.S.No.83 of 2015 for default on 22.02.2016.

2.4 Thereafter, the appellants have filed an application in I.A.No.1 of 2017 in O.S.No.83 of 2015 to restore the suit in O.S.No. 83 of 2015. The said application was filed on 21.03.2017. In the affidavit filed in support of the said application, the appellants have narrated the entire facts and also stated the reasons for their non-appearance on 22.02.2016. The respondents filed their counter and contested the application. The Additional District Judge, Krishnagiri, after taking into consideration the case of both the parties, dismissed the application.

3. Aggrieved over the order passed by the Additional District Judge, Krishnagiri, the plaintiffs in O.S.No.83 of 2015 have filed the above appeal.

4. Heard, Mr.Immanuel, learned counsel appearing for the appellants, Mr.C.Ashok Kumar, learned counsel appearing for the respondents 1, 3 and 4 and Mr.K.A.Mariappan learned counsel appearing for the 2nd respondent.

5.1 On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the respondents 3 and 4 have filed the suit in O.S.No.86 of 2011, on the file of Additional District Court, Krishnagiri, for partition and other reliefs. The appellants have filed the suit in O.S.No.35 of 2012 on the file of Sub Court, Hosur for permanent injunction. At the instance of the respondents 3 and 4, the suit in O.S.No.35 of

2012 was transferred to the file of Additional District Court, Krishnagiri to be tried along with O.S.No.86 of 2011. After transfer, the suit in O.S.No.35 of 2012 was renumbered as O.S.No.83 of 2015.

5.2 When the suits in O.S.Nos.86 of 2011 and 83 of 2015 were tried jointly, by an administrative order, the Principal District Judge, Krishnagiri, has transferred the suit in O.S.No.86 of 2011 to the file of Additional District Court, Hosur without transferring the connected suit in O.S.No.83 of 2015. When the District Judge has passed an order transferring the suit in O.S.No.35 of 2012 to be tried along with O.S.No.86 of 2011, the District Judge should have transferred both the suits to the file of Additional District Court, Hosur and should not have retained the suit in O.S.No.83 of 2015, more so, when a judicial order was passed in Tr.O.P.No.68 of 2013 to transfer the suit pending on the file of Sub Court, Hosur to the file of Additional District Court, Krishnagiri to be tried jointly along with O.S.No.86 of 2011.

5.3 In these circumstances, when the suit in O.S.No.83 of 2015 was posted for trial, the appellants filed a memo on the very same day seeking for adjournment stating that the suit in O.S.No.83 of 2015 should also be transferred to the file of Additional District Court, Hosur. However, the trial Court erroneously dismissed the suit for non prosecution.

5.4 Thereafter, the appellants filed an application in I.A.No.1 of 2017 under Order IX Rule 9 of CPC to restore the suit on 21.03.2017. In the affidavit filed in support of the application, the appellants have narrated the entire facts and also stated the reasons for their non-appearance in O.S.No.83 of 2015. The Additional District Judge, Krishnagiri, without considering the matter in a proper manner, erroneously, dismissed the application.

6. When there was a judicial order passed by the Principal District Judge transferring the suit pending on the file of Sub Court, Hosur in O.S.No.83 of 2015 to the file of Additional District Judge, Krishnagiri to be tried along with O.S.No.86 of 2011, by an administrative order, the suits should not have been segregated. The Principal District Judge should have transferred both the suits to the file of Additional District Court, Hosur. Further, when a memo was filed on 22.02.2016 to adjourn the suit in O.S.No.83 of 2015, the Trial Court should have considered that memo and atleast at that stage should have transferred the suit in O.S.No.83 of 2015. The trial Court, instead of adjourning the matter on 22.02.2016 erroneously dismissed the suit for default.

7. Unless the order passed in Tr.O.P.No.68 of 2013 is modified or set aside by a competent appellate forum, the Additional District Judge, Krishnagiri, is bound by the order passed in the Tr.O.P. The Additional District Judge has no jurisdiction to modify the order passed in Tr.O.P. on his own and disposed of the suit separately. The reasoning given by the Additional District Judge, Krishnagiri is without any basis and is liable to be set side.

8. Mr.C.Ashok Kumar, learned counsel appearing for the respondents 1, 3 and 4 submitted that the respondents 3 and 4 have filed an application in I.A.No.82 of 2015 in I.A.Nos.176 and 177 of 2012 in O.S.No.83 of 2015 under Order 39 Rule 2A of CPC to punish the appellants for the Contempt of Courts for disobeying the order of injunction and hence, the Additional District Court, Hosur may be directed to dispose of the application, within a time frame.

9. Mr.K.A.Mariappan learned counsel appearing for the 2nd respondent submitted that a time frame may be fixed for the early disposal of the suits.

10. In these circumstances, I direct the Principal District Judge, Krishnagiri, to transfer the suit in O.S.No.83 of 2015 to the file of Additional District Court, Hosur to be tried along with O.S.No.86 of 2011. Having regard to the submissions made by the learned counsel on either side, I direct the Additional District Judge, Hosur, to dispose of the application in I.A.No.82 of 2015 in I.A.Nos.176 and 177 of 2012 in O.S.No.83 of 2015 on merits and in accordance with law, within a period of four weeks from the date of receipt of the papers from the Additional District Court, Krishnagiri. The Additional District Court, Krishnagiri is directed dispatch the records to the Additional District Court, Hosur, within 10 days from the date of receipt of a copy of this judgment. Further, the Additional District Court, Hosur is directed to dispose of the suits in O.S.Nos.86 of 2011 and 83 of 2015, on merits and in accordance with law, within a period of four months from the date of disposal of the application in I.A.No.82 of 2015.

With these observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

Rj

To

1. The Principal District Judge,
Krishnagiri,
2. The Additional District Judge,
Krishnagiri.
3. The Additional District Judge,
Hosur,
4. The Section Officer/Record Keeper,
VR Section,
High Court, Madras.

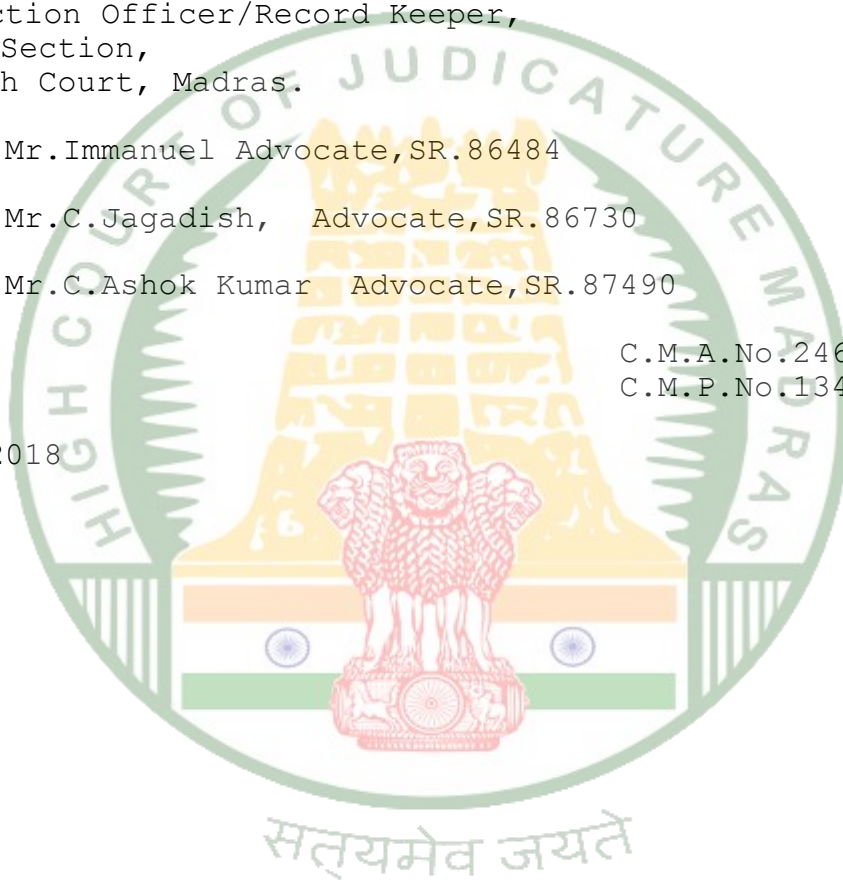
+ 1 cc to Mr.Immanuel Advocate,SR.86484

+ 1 cc to Mr.C.Jagadish, Advocate,SR.86730

+ 1 cc to Mr.C.Ashok Kumar Advocate,SR.87490

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