

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.01.2017

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1852 of 2008

Canniammalle

... Appellant/1st Respondent

-Vs-

1. Vasuky
2. Kanagaraj
3. Mohanraj
4. Ramya
5. Rathinasabapathy [Deceased]
6. Minatchy
7. Poongothai
8. S.R.Manickam
[RR7 & 8 brought on record as LRs of deceased R5 vide order of Court dt.26.6.15 made in MPs.1 and 2/2014) ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Order XLIII Rule (1)(r) of Code of Civil Procedure, against the order dated 20.12.2007 passed in I.A.No.905 of 2007 in O.S.No.3 of 1998 on the file of the Principal Subordinate Judge, Puducherry.

For Appellant : Mr.S.Subbiah

For RR1 to 4 : Mr.G.R.Swaminathan, for
Ms.Usha Raman

For RR5 & 6 : Mr.P.Kumanan

JUDGMENT

This appeal is preferred against the order dated 20.12.2007 passed in I.A.No.905 of 2007 in O.S.No.3 of 1998.

2. The brief set of facts that are necessary for appreciating the current controversy may be stated:-

- One Selvaganapathy was said to have possessed two items of properties, which are described as 'A' Schedule and 'B' Schedule in the plaint. Selvaganapathy died on 15.12.1975 and he left behind him surviving his widow

[the second defendant] and three children, which included the plaintiff, the first defendant and one Natarajan, who died on 27.01.1992. Natarajan's widow is the third defendant and his children are defendants 4 to 6. The plaintiff has filed the suit for partition claiming 1/4 share in both the schedules of properties. So far as the property described in "A" schedule is concerned, both the first defendant [the brother of the plaintiff] and the second defendant [the mother of the plaintiff] have transferred their right in the 'A' schedule property during the pendency of the suit, and accordingly, the plaintiff has become entitled to 4/5 shares therein. In the written statement, the contesting defendants 3 to 6 have given their consent to pass a preliminary decree in terms thereof.

- The dispute essentially is limited to 'B' schedule item of property which according to defendants 3 to 6, were the personal property of Natarajan and that the other heirs of Selvaganapathy did not have any right.

3. It appears that there was an old dilapidated building in the 'A' Schedule property and it collapsed. The plaintiff therefore took some efforts to put up a new construction in its place and since defendants 3 to 6 felt that the plaintiff was attempting to change the character of the property, they moved the trial Court in I.A.No.905 of 2007, seeking an order of injunction to restrain the plaintiff from going ahead with her proposed construction. The trial Court after hearing both the sides has passed an order of status quo, and aggrieved by the said order, the appellant has moved this Court with this appeal.

4. Heard both sides. I find the pendency of the present appeal has only contributed to the delay in proceeding with the trial of the suit and no more. In fitness of things, it is necessary for the trial Court to proceed with the original suit, which is pending for about 19 years now. I am therefore not inclined to disturb the present order nor inclined to enter any finding on the merits of the matter, but only direct the trial Court to dispose of the suit within a period of two months from the date of receipt of copy of this order. This Court also finds that there is enough materials on record to explore the possibility of settlement, which the trial Court is directed to attempt but, without granting unnecessary time. The learned counsels appearing for all the parties before this Court also undertake to help the parties to arrive at a negotiated settlement.

4. With the above observations and directions, this appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

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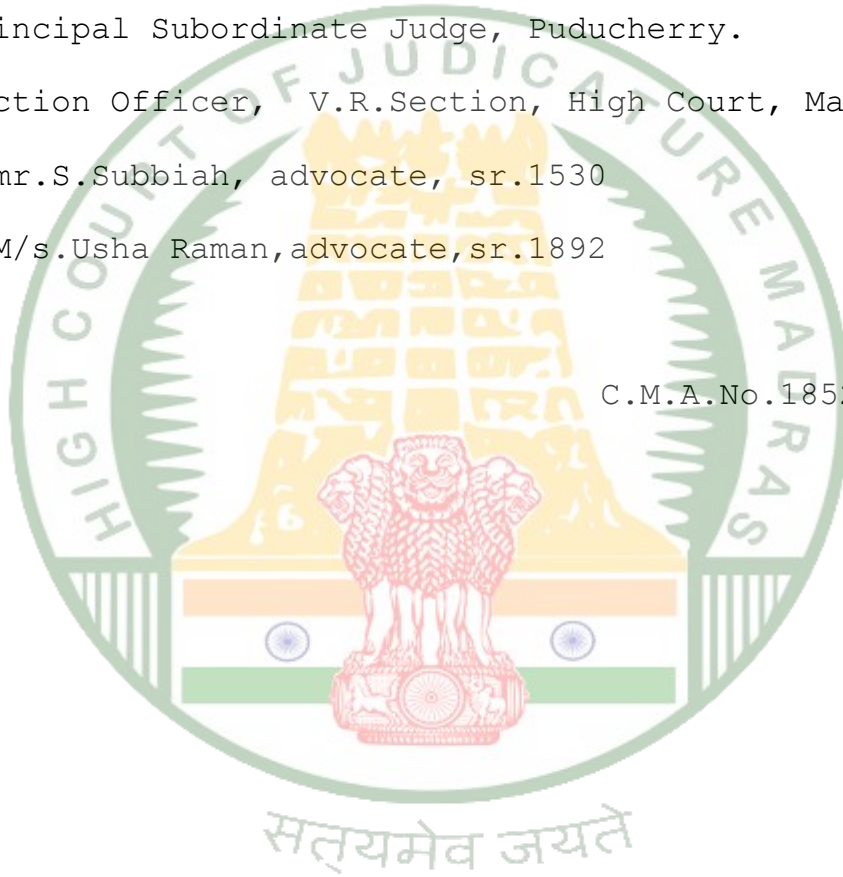
Sub Asst. Registrar

To:

1. The Principal Subordinate Judge, Puducherry.
 2. The Section Officer, V.R.Section, High Court, Madras.
- +1 cc to mr.S.Subbiah, advocate, sr.1530
+1 cc to M/s.Usha Raman, advocate, sr.1892

rv(co)
krd 9/1

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