

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 25-10-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.167 OF 2012

Palanivel

... Appellant/Defendant

-vs-

Sarangapani

...Respondent/Petitioner

Appeal against the order, dated 31.10.2011, made in A.S.No.10 of 2009 and I.A.No.22 of 2011 on the file of Additional Subordinate Court, Mayiladuthurai. In reversing the Judgment and decree in O.S.No.239 of 2007 dated 20.11.2008 on the file of the Principal District Munsif, Mayiladuthurai.

For appellant : Mr.A.Muthukumar

For respondent : Mr.S.Sounthar

JUDGMENT

Defendant in the suit for ejectment is the appellant. The trial Court dismissed the suit, on the ground that there is no jural relationship of landlord and tenant and that the plaintiff has not proved title to the property and also that he is not entitled to the possession of the property. Against the decision of the trial Court, plaintiff filed an appeal before the lower appellate Court. During the pendency of the appeal, the plaintiff also filed an interlocutory application to receive additional documents. While deciding the appeal, the lower appellate Court allowed the interlocutory application and remanded the matter to the trial Court with a direction to decide the issue as to who is the title holder of the suit property, on the basis of the additional documents received. Aggrieved over the order of remand for the purpose of deciding the title of the suit property, the appellant/defendant is before this Court.

2. According to the learned counsel for the appellant, when a suit is filed under Section 43 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, it is clearly based on the landlord-tenant relationship and the same cannot be converted

into one of title. In support of his contention, he relied upon a decision of this Court in Soura Beeviammal v. Ameena Ammal, 1981 (94) L.W.502, which is followed by this Court in a subsequent decision in Fathuma and Another v. K.S.Kadherkani, 1995 (2) L.W.705, wherein this Court has found that in a suit having been valued upon one year's rent only, the Court will not hold the question of title. If on a plea by the defendant the question of title arises, it can be gone into only for the purpose of determining as to whether the relationship of tenancy subsisted between the plaintiff and the defendant. If it is to be found that the relationship of tenancy between the plaintiff and the defendant does not subsist, the plaintiff must fail in the suit as instituted by him and the suit cannot be converted into one for declaration of title and for recovery of possession on the basis of title.

3. Learned counsel for the respondent has also vehemently contended that it is not the plaintiff who sought to decide the title, but the lower appellate Court was led to render a decision on the basis of written statement and counter affidavit filed in the suit and the interlocutory application respectively, that the issue of title must be decided. He has also insisted that in view of the additional documents being marked and to decide the issue of jural relationship between the plaintiff and the defendant, the matter needs to be remanded.

4. Heard the rival contentions.

5. As held by a Division Bench of this Court in Balasidhantam v. Perumal Chetti, 1914 (1) L.W.641, the suit filed for ejectment cannot be converted into one of declaration of title and recovery of possession. Therefore, the remand made by the lower appellate Court to decide the question of title of the suit property is not proper. However, as held by the Division Bench of this Court, the matter can be remanded for the purpose of determining as to whether the relationship of tenancy subsisted between the plaintiff and the defendant. As such, the order passed by the lower appellate Court is modified to the effect that the remand order shall be for the purpose of determining the jural relationship between the plaintiff and the defendant, on the basis of oral as well as documentary evidence let in before the trial Court. In view of the additional documents being received, the parties are permitted to let in additional evidence, if any, in respect of the jural relationship between the parties concerned. The trial Court is further directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order.

6. Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, the connected M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Subordinate Court,
Mayiladuthurai.
2. The Principal District Munsif,
Mayiladuthurai.

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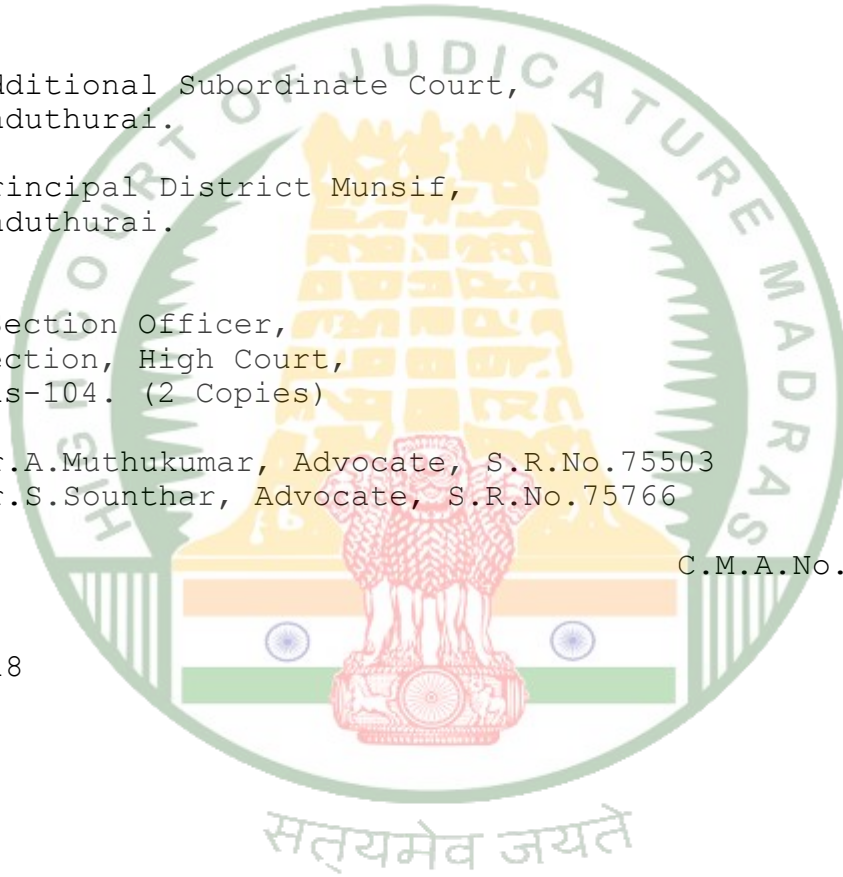
The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.75503

+1cc to Mr.S.Sounthar, Advocate, S.R.No.75766

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RJ(CO)
CS/09/03/18



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