



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Eighteenth day of September Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice M.M.SUNDRESH

and

The Hon`ble Mr.Justice N.SATHISH KUMAR

C.M.P. (MD) Nos.5771 and 7714 of 2017

IN

A.S. (MD) No.91 of 2017

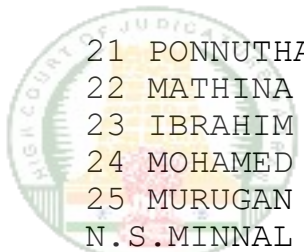
CMP (MD) No.5771 of 2017:

1 ABDULLA
2 NOORJAHAN

... PETITIONERS/APELLANTS

Vs

ISMAIL PATHUMA (DIED)
1. PATHUMUTHU JOHARA
MOHAMMED ANIFA (DIED) .
2 SEENI MATHAR
3 SEENI PITCHAI
4 M. MAJAHAR BEGAM
5 M. THOULATH BEEBI
6 R.SYED RAVIYATH
7 S. SHAHIRA BANU
8 M. ANISH FATHIMA
JOHRA BEEVI (DIED) .
9 SREENIVASAN
10 AYYAVU AMBALAM
11 MURUGAN
SEENI MATHAR (DIED)
12 BHADHUR RAJA
SETHU (DIED) ,
ALAGAR (DIED)
13 SEKAR
14 PARTHIBAN
15 SAHUL HAMEED
SULTHAN (DIED)
16 RAGHUNATHAN
MAMOODHA (DIED)
17 RAJKUMAR
18 PONNUSAMY
19 CHELLAMMAL
SAITHOON (DIED)
20 RAVIATH BEEVI
RAJA MOHAMMED (EXONERATED) ,
SYED (DIED)



21 PONNUTHAI
22 MATHINA
23 IBRAHIM BATHU
24 MOHAMED ALI JINNAH
25 MURUGAN
N.S.MINNAL KABIBA (DIED)
26 H.SAITHOON BEEVI
27 NOORJAHAN
28 E. MEGARAJ
29 N.S. SAIPUDEEN @ ATHAVU
30 SAMSUDEEN
31 KADHAR MYDEEN
32 A. SAMSUDHEEN
33 ZAHEER HUSSAIN
34 MUMTAJ
35 MARIAM BEEVI
36 MINOR RAMZAN
37 MINOR MAMSAL

(MINOR RESPONDENTS 36 & 37

ARE REPRESENTED THROUGH THEIR COURT

GUARDIAN ADVOCATE TR.SENTHIL)

... RESPONDENTS/RESPONDENTS

(RESPONDENTS 9 to 37 ARE GIVEN UP IN CMP ALONE.

HENCE NO NOTICE IS NECESSARY TO THEM)

CMP(MD) No.7714 of 2017:

ISMAIL PATHUMA (DIED)

1 PATHAMUTHU JOHARA

MOHAMED ANIFA (DIED)

2 SEENI MADHAR

3 SEENI PITCHAI

4 M.MAJAHAR BEGUM

5 M.THOULATH BEEBI

6 R.SYED RAVIYATH

7 S.SHAHIRA BANU

8 M.ANISH FATHIMA

... PETITIONERS/1 to 8 RESPONDENTS

Vs

JOHRA BEEVI (DIED)

1 ABDULLA

2 NOORJAHAN

... RESPONDENTS 1,2/APPELLANTS 1 & 2

3 SREENIVASAN

4 AYYAVU AMBALAM

5 MURUGAN

SEENI MATHAR (DIED)

6 BHADHUR RAJA

SETHU (DIED),

ALAGAR (DIED)

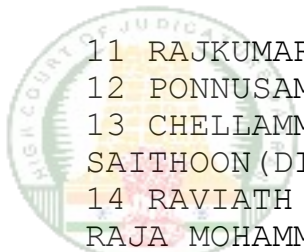
7 SEKAR

8 PARTHIBAN

9 SAHUL HAMEED

10 RAGHUNATHAN

MAMOODHA (DIED)



11 RAJKUMAR
12 PONNUSAMY
13 CHELLAMMAL
SAITHOON (DIED)
14 RAVIATH BEEVI
RAJA MOHAMMED (EXONERATED),
SYED (DIED)
15 PONNUTHAI
16 MATHINA
17 IBRAHIM BATHU
18 MOHAMED ALI JINNAH
19 MURUGAN
N.S.MINNAL KABIBA (DIED)
20 H.SAITHOON BEEVI
21 NOORJAHAN
22 E. MEGARAJ
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24 SAMSUDEEN
25 KADHAR MYDEEN
26 A. SAMSUDHEEN
27 ZAHEER HUSSAIN
28 MUMTAJ
29 MARIAM BEEVI
30 MINOR RAMZAN
31 MINOR MAMSAL
(MINOR RESPONDENTS 30 & 31 ARE
REPRESENTED THROUGH THEIR COURT
GUARDIAN ADVOCATE TR.SENTHIL.

...RESPONDENTS 3 to 31/
RESPONDENTS 9 to 37

Prayer in CMP(MD) . 5771/ 2017 :

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of the Judgment and Decree dated 05/12/2016 made in O.S.No. 202/2004 on the file of the Learned VI Additional District Court, Madurai, pending disposal of the above AS(MD) 91/2017.

Prayer in CMP(MD) . 7714/ 2017 :

To direct the Respondents 1&2/Appellants 1&2 herein in AS (MD) No.91/2017 to deposit the rents collected from the tenants before the Trial Court and to comply with the direction in I.A.No.121/2003 in O.S.No.202/2004 dt.15.9.2006 on the file of the VIth Additional District Judge, Madurai and allow the petitioners 1 to 8/Respondents 1 to 8 to withdraw the same and thus render justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.M.V.VENKATASESHAN, Advocate for the petitioners in CMP(MD) No.5771 of 2017 and Respondent 1 & 2 in CMP(MD) No.7714 of 2017 and M/S.S.A.AJMAL KHAN CAVEATOR for respondents in CMP(MD) No.5771 of 2017 and Petitioners in CMP(MD) No.7714 of 2017 the court made the following order:-

(Order of the Court was made by **M.M.SUNDRESH, J**)

C.M.P.(MD) No.5771 of 2017 has been filed by the petitioners, who are the defendants 2 & 3 in the suit filed for partition and separate possession. A preliminary decree has been passed as against which the present appeal suit has been filed. Pending appeal, the petitioners seek an order of stay.

2.C.M.P.(MD) No.7714 of 2017 has been filed by the petitioners, who are plaintiffs in the suit and obtained a preliminary decree. This application has been filed seeking a direction to the respondents 1 & 2/Appellants 1 & 2 to deposit the rent payable by the other defendants who have not filed any appeal against the preliminary decree.

3.The learned counsel appearing for the appellants would submit that they are not receiving the rents from the tenants. Some of them have left the premises and some of them are no more. Further, there is no objection for the appellants for the remaining defendants to deposit the rent before the trial Court to the credit of O.S.No.202 of 2004.

4.Considering the above, in C.M.P.(MD) No.5771 of 2017 there shall be an order of interim stay regarding passing final decree alone. However, it is made clear that the further proceedings shall go on.

5.In C.M.P.(MD) No.7714 of 2017, the respondents/defendants who are tenant in the suit properties are directed to deposit their respective rent to the credit of O.S.No.202 of 2004 on the file of VI Additional District Court, Madurai periodically on or before 7th of ensuing English Calender months starting from October, 2017. Resultantly, the respondents/defendants who are tenants shall not pay any rent to the appellants, who are hereby injuncted from receiving the rent.

Both the petitions are disposed of accordingly.

sd/-

18/09/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

VI ADDITIONAL DISTRICT JUDGE, MADURAI.

+2. C.C. to M/S.M.V.VENKATASESHAN Advocate SR.No.30889

ORDER IN

C.M.P.(MD) Nos.5771 and 7714 of 2017

IN A.S.(MD) No.91 of 2017

Date :18/09/2017