

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.02.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.317 of 1997

And

C.M.P.Nos.120 of 2011, 1161 of 1999 and 3573 of 1997

And

Tr.Appl.No.335 of 2002

And

C.M.P.No.119 of 2011

S.A.No.317 of 1997:

- 1.Vasantha (Died)
- 2.P.Kalyanam Pillai
- 3.K.Rani
- 4.Sivasakthi
- 5.K.Rukmani

(Appellants 2 to 5 brought on record
as LRs of the deceased sole appellant
vide order of Court dated 11.04.2011
made in C.M.P.Nos.200 to 202 of 2011)

... Appellants

Vs.

Perumal Chettiyar

... Respondent

Prayer:

Second Appeal filed under Section 100 of C.P.C. against
the judgment and decree dated 31.12.1996 made in A.S.No.86 of
1995 on the file of the Principal District Judge, Villupuram
Ramasamy Padayachiyar District, Villupuram, confirming the
judgment and decree dated 31.01.1995 made in O.S.No.591 of 1993
on the file of the Principal District Munsif of Villupuram.

For Appellants : Mr.T.Dhanyakumar

For Respondent : Ms.Hema Sampath

Senior Counsel

for Ms.R.Meenal

Tr.Appl.No.335 of 2002:

- 1.Vasantha (Died)
- 2.P.Kalyanam Pillai
- 3.K.Rani
- 4.Sivasakthi
- 5.K.Rukmani

(Appellants 2 to 5 brought on record
as LRs of the deceased sole appellant
vide order of Court dated 11.04.2011
made in C.M.P.Nos.193 to 195 of 2011)

... Appellants

Vs.

Perumal Chettiyar

... Respondent

Prayer:

Appeal filed under Order 41 Rule 1 of C.P.C. against the
judgment and decree in O.S.No.827 of 1992 dated 07.04.1995 on
the file of the Additional District Munsif Court, Villupuram.

For Appellants : Mr.T.Dhanyakumar
For Respondent : Ms.Hema Sampath
Senior Counsel
for Ms.R.Meenal

C O M M O N J U D G M E N T

The respondent/ plaintiff filed a suit for declaration
title, recovery of possession and for mandatory injunction in
respect of plaint 'B' schedule property. The first appellant/
defendant filed written statement and she did not dispute the
title of the plaintiff over S.No.777 and she also admitted that
she is not in possession of the same, before the lower Court
itself. There is a finding in the lower Court, that S.No.777
will be identified by Surveyor and possession will be handed
over to the plaintiff. The suit was decreed in respect of the
relief of declaration of title and recovery of possession and
the suit was dismissed in respect of the relief of mandatory
injunction. Aggrieved by the same, the first appellant/
defendant filed appeal before the lower Appellate Court.

2.In the earlier occasion, the respondent/ plaintiff filed
I.A.3244 of 1995 before the lower Court. The decree provided
was not in accordance with the judgment. Accordingly, the lower
Court decree was corrected through I.A.No.3244 of 1995. As
against the I.A.No.3244 of 1995, the first appellant/ defendant
filed the C.R.P.No.1522 of 1996. The said C.R.P., was also
dismissed and this Court arrived at a finding based on the
finding of the lower Court that the plaintiff is entitled to get
possession after measuring the property. Though the C.R.P.
order was passed on 25.07.1996, thereafter, the first appellant/
defendant lost the case before the lower Appellate Court and
hence, the first appellant/ defendant preferred the second
appeal and transfer appeal before this Court.

3.At the time of admission of the second appeal, on

20.03.1997, this Court has framed the following substantial question of law:

"Whether the Courts below erred in granting the relief of possession despite the finding that the defendant has not encroached the suit property?"

4.Both the second appeal and transfer appeal were clubbed together and this Court passed an order in C.M.P.No.3572 of 1997 in S.A.No.317 of 1997. This Court vide order dated 25.11.1997 made in C.M.P.No.3572 of 1997 in S.A.No.317 of 1997 has held as follows:

"This petition has been filed seeking stay of the execution of the decree made in O.S.No.591 of 1993 on the file of the Principal District Munsif, Villupuram as confirmed in A.S.No.86 of 1995 on the file of the Principal District Judge, Villupuram. The decree is one declaring the respondents title over the B-Schedule property and also for recovery of possession of the B-Schedule property. The B-Schedule property is in Survey No.777 of Mettupalayam Village, Villupuram Taluk. Admittedly, the counsel for the petitioner represents that the petitioner has no claim over Survey No.777 and under the pretext of executing the decree, now the respondent is seeking possession of survey No.774. The lower court has to appoint a Surveyor as per clause 2 of the decree in order to measure the property and hand over possession to the respondent. As and when the Surveyor measures the property, he has to localize the property and at that time, it is open to the petitioner to raise her objections as to whether the property is in Survey No.777 or Survey No.774. If the property is at survey No.777, the petitioner cannot have any objection. If the property situate at Survey No.774, the lower court will dispose of the E.P. On merits. Hence, there is no need to grant any stay. The stay petition is dismissed."

5.The learned counsel appearing for the appellants/defendant would submit that the appellants have no objection if the property is situated in survey No.777. If the property is situated in Survey No.774, the lower Court has to pass orders on merits in view of the order dated 25.11.1997 made in

C.M.P.No.3572 of 1997 in S.A.No.317 of 1997.

6.The learned Senior Counsel appearing for the respondent/plaintiff would submit that as per the direction of this Court already the lower Court has appointed the Surveyor as per Clause 2 of the decree in order to measure the property and hand over possession to the respondent. Accordingly, as per clause 2 of the lower Court order, the Surveyor was appointed and Surveyor has also filed a report. The report is available before the lower Court. In order to give delivery of possession to the plaintiff if the Surveyor report is available, the appellants have no objection if the property is situated in S.No.777 to hand over the same to the plaintiff.

7.In view of the categorical submissions made by the learned counsel appearing for the appellants as well as the learned Senior Counsel appearing for the respondent, the second appeal is dismissed.

The execution Court may proceed with the case based on the Surveyor report, since the learned counsel appearing for the appellants/ defendant has categorically stated that the appellants have no objection if the property is situated in survey No.777 and the plaintiff is also claiming suit property only in S.No.777. The defendant's property is situated in S.No.774. In view of the above, the defendant did not encroach upon the property in S.No.777.

8.It is only identification of the survey number in which the suit property is situated. Accordingly, this Court has already passed an order dated 25.11.1997 in C.M.P.No.3572 of 1997 in S.A.No.317 of 1997. In view of the above, nothing require for any further adjudication in the second appeal.

9.In the result, the second appeal is dismissed. The judgment and decree dated 31.12.1996 made in A.S.No.86 of 1995 on the file of the learned Principal District Judge, Villupuram Ramasamy Padayachiyar District, Villupuram, confirming the judgment and decree dated 31.01.1995 made in O.S.No.591 of 1993 on the file of the learned Principal District Munsif, Villupuram, is confirmed. Consequently, the transfer appeal is also dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

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Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Villupuram Ramasamy Padayachiyar District,
Villupuram.

2.The Principal District Munsif,
Villupuram.

3.The Additional District Munsif,
Villupuram.

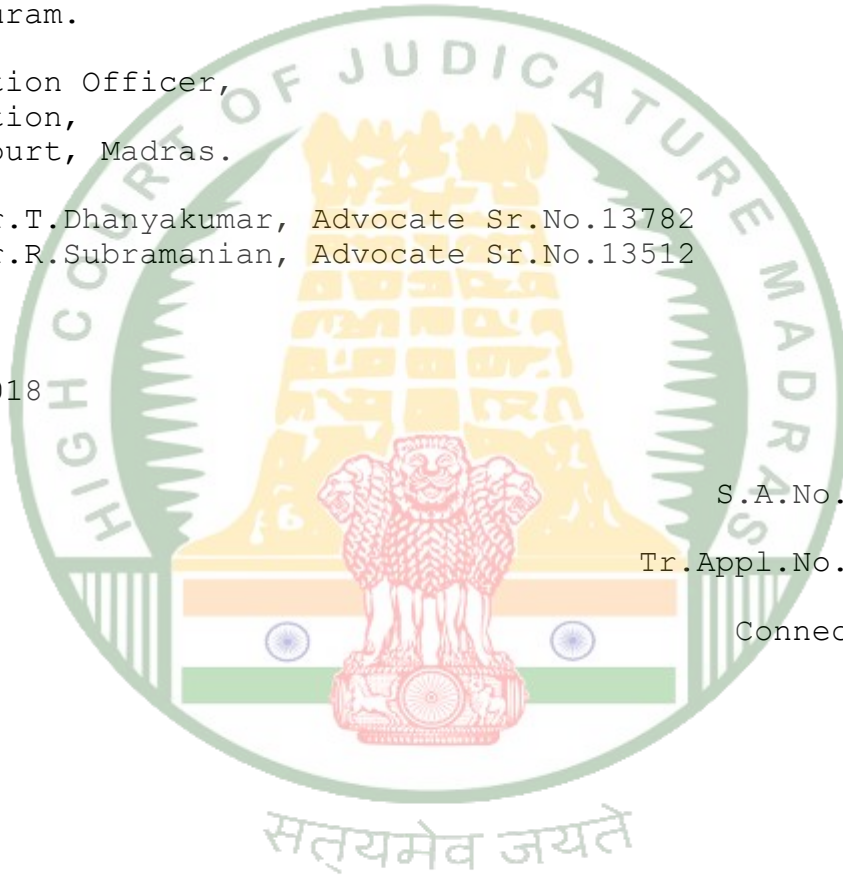
4.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.T.Dhanyakumar, Advocate Sr.No.13782

+1cc to Mr.R.Subramanian, Advocate Sr.No.13512

NMI (CO)

sm:22.3.2018



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And
Tr.Appl.No.335 of 2002
And
Connected C.M.Ps.

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