

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2660 of 2015

and

M.P.No.1 of 2015

Senbagavalli

.. Appellant/Respondent

Vs.

1. Sambandam @ Thirugnanasambandam

2. Ganesan .. Respondents/Petitioners

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of C.P.C., against the Fair and Final Order of the District Court, Nagapattinam dated 21.07.2015 made in Pauper Original Petition No.13 of 2012 in Unfiled A.S. _____ of 2015.

For Appellant : Mr.S.Sounthar

For Respondents : No Appearance

JUDGMENT

The present appeal is preferred by the plaintiff in O.S.No.41 of 2010 on the file of the Principal Sub-Court, Mayiladuthurai, aggrieved against the order allowing a Pauper Original Petition No.13 of 2012 Vide its order dated 21.07.2015.

2. The brief facts that are necessary for the current purpose is that: The appellant herein has laid the suit for specific performance and had obtained a decree. Challenging the decree, the defendants preferred an appeal as indigent persons, requiring the Court to declare them as indigent persons. They filed P.O.P.No.13 of 2012. Vide order dated 08.01.2012, the District Court, Nagapattinam, has allowed the petition. The appellant herein, challenged the same in C.M.A.No.2219 of 2013, essentially on the ground that the Government Pleader was not heard in the matter. This Court vide its order dated 05.07.2013, accepted the contention of the appellant and set aside the matter and remanded it back to the District Court, Nagapattinam.

3. After remand, the Tahsildar has filed a report, wherein he had said that the petitioners possessed family properties in Sannanallur Village, Nagapattinam District. However, no specific details of the said properties were given in the petition. After considering the evidence before it, the

District Court allowed the petition.

4. The respondents in this case are served, but none appeared. Heard Mr.S.Sounthar, learned counsel for the appellant.

5. The learned counsel for the appellant submitted that the Tahsildar has filed a report indicating that the respondents herein (petitioners in P.O.P.No.13 of 2012) possesses family properties in Sannanallur Village, Nagapattinam District and this has been suppressed by them in the petition. Therefore, under Order 33 Rule 5 r/w. Rule 2, C.P.C., this petition is liable to be rejected.

6. This Court perused the records of the court below as well as the order passed by the District Court.

7. The piece of evidence which the appellant relies on is the report of the Tahsildar. As stated earlier, in his report he has only made a statement that the respondents herein possessed ancestral family properties without giving particular details thereof. The learned counsel for the appellant responded that these are all ancestral properties where the appellant have subsisting right.

8. The Court is not required to undertake an investigation of a Sherlock Holmes variety, and to the point of accuracy to ascertain if the petitioners, who claim to be indigent litigant, possessed properties at all. If a person does not possess the property, he cannot prove the negative. The burden is cast upon the appellant herein to state whether the respondents possessed the property or not. Here neither the counter of the appellant nor the report of the Tahsildar make a pointed allegation about the existence of a specific property and the material particulars thereof which they had omitted to disclose as required under Order 33 Rule 2 C.P.C., to warrant a rejection under Rule 5.

9. In this circumstance, this Court does not find any merit in the appeal and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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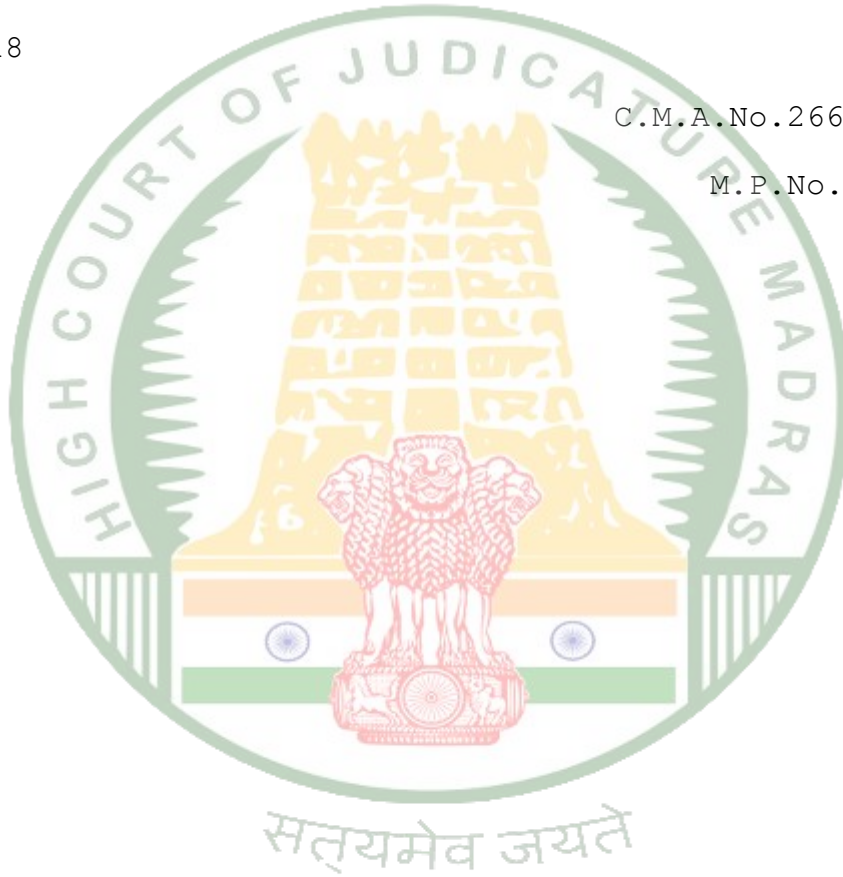
1. The District Judge
Nagapattinam.

2. The Principal Subordinate Judge, Mayiladuthurai

3. The Section Officer,
V.R.Section,
High Court,
Madras.

SV(CO)
sm:7.8.2018

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