

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2058 of 2009

Shanmugam

... Appellant/Petitioner

Vs.

1. P.Haridoss

2. Sagunthala Ammal

3. Sumathi

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43, Rule 1 (t) of Civil Procedure Code, against the order and decreetal dated 05.11.2008 made in I.A.No.97 of 2008 in A.S.No.50 of 2005 on the file of the Principal District Court, Villupuram District, Villupuram.

For Appellant : Mr.D.Pradeep Kumar
For Respondents : M/s.A.K.Kumarasamy

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the order passed by the Principal District Judge, Villupuram, in I.A.No.97 of 2008 in A.S.No.50 of 2005, dated 05.11.2008, dismissing the application to set aside the dismissal for default.

2. The appellant is brother of the 3rd respondent and son of the 2nd respondent. The father of the appellant and the 3rd respondent is the owner of the property and he has executed a WILL in favour of the 2nd respondent. After the death of his father, the 2nd respondent has become an absolute owner and she had settled the property in favour of the 3rd respondent herein. Since the appellant is claiming possession, the 3rd respondent filed a suit for recovery of possession. During the pendency of the suit, the 3rd respondent has sold the property to the 1st respondent herein.

3. Aggrieved over the sale of the property to a third party, the appellant filed the suit for bare injunction restraining the respondents from interfering with his possession and enjoyment of the property.

4. The trial Court by judgment dated 13.02.2003 has found that the title is vested with the 1st respondent, having purchased the property from the lawful owner. Further, it has held that the appellant has failed to prove the possession of the property and hence, dismissed the suit on merits. Against which, the appellant preferred an appeal in A.S.No.50 of 2005 before the Principal District Judge, Villupuram. Even though the matter was posted for arguments of the learned counsel for the appellant, he reported no instructions before the Court and accordingly, the appeal was dismissed.

5. Thereafter, the appellant preferred an application in I.A.No.97 of 2008 to set aside the order of dismissal passed by the Lower Appellate Court. The Lower Appellate Court considering the enormous time of three years for making submissions, dismissed the application. On a perusal of the order dated 05.11.2008 passed by the Lower Appellate Court, it is seen that the 1st respondent made his submissions that the application can be allowed on payment of costs. The Lower Appellate Court refused to accept the same and dismissed the application.

6. Head the learned counsel appearing for both the parties.

7. The ground raised by the appellant is that the suit filed by his sister, 3rd respondent herein for recovery of possession by itself will prove his possession and this point needs to be argued on appeal.

8. This Court is also inclined to accept the submission that for the fault of advocate, the litigant shall not suffer. Therefore, one such last opportunity should be given to decide the appeal on merits rather than dismissing the case on technicalities.

9. Further, considering the long pendency of the litigation i.e. past 17 years, this Court is of the opinion that compensatory costs shall be awarded to the 1st respondent, who is a bona fide purchaser from the lawful owner. Therefore, a sum of Rs.50,000/- (Rupees Fifty thousand only) is awarded as costs payable to the 1st respondent by the appellant within a period of two (2) weeks from the date of receipt of a copy of this order. On such payment made, the Lower Appellate Court is directed to dispose of the appeal within a period of one (1) month from the date of receipt of a copy of this order, on merits. If there is

default in making the payment of costs, this Civil Miscellaneous Appeal itself will stand dismissed.

10. With the above observations and directions, this Civil Miscellaneous Appeal is disposed of.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

asi

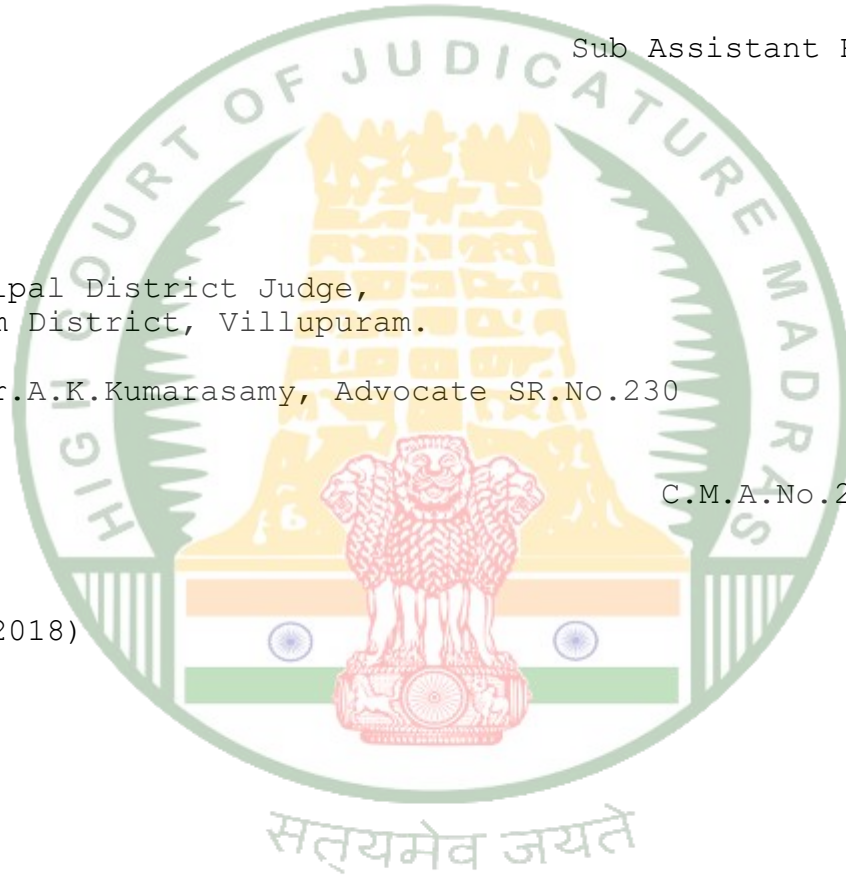
To

The Principal District Judge,
Villupuram District, Villupuram.

+1cc to Mr.A.K.Kumarasamy, Advocate SR.No.230

C.M.A.No.2058 of 2009

RJ(CO)
GN(20/04/2018)



WEB COPY