



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

Wednesday, the Eleventh day of April Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP (MD) No.8641 of 2017

IN

SA (MD) No.316 of 2011

CHANDRASEKHARAN NAIR

... PETITIONER/7TH RESPONDENT

Vs

1 DASAYYAN NADAR,
2 RAJAM,
3 RAJESH,

...RESPONDENTS 1 TO 3/
APPELLANTS 1 TO 3

4 RAGHAVAN NAIR @ REGHU (DIED)
5 KRISHNANKUTTY
6 LEKSHMANAN NADAR
7 SELVAMONI NADAR,
8 THERASAMMA
9 RAJAMONI NADAR

...RESPONDENTS 4 TO 9/
RESPONDENTS 1 TO 6

10 SELVARAJ
11 RASEENA
12 EASWARADHAS (DIED)
13 SWAMYDHAS
14 SUNNARAN
15 KUMAR
16 SARASWATHI
17 SUGANTHI
18 SELVIN
19 RAJAN,

...RESPONDENTS 10 TO 19/
RESPONDENTS 8 TO 17

20 KANAKAM
21 E. UMA,
22 E. ABIN
23 E. REMA
24 E. ANISH

...RESPONDENTS 20 TO 24/PROPOSED
RESPONDENTS 18 TO 22 PENDING IN
MP(MD)NO.1 TO 3 OF 2013 AND THE
LEGAL HEIRS OF DECEASED 10TH
RESPONDENT

25 KARUNAGARAN NAIR
26 SREERANIAN
27 SUKESHAN



28 MUKUNTHA KUMAR
29 SUJATHA KUMAR

..RESPONDENTS 25 TO 29/PROPOSED
RESPONDENTS 23 TO 27 PENDING IN
CMP(MD)NO.183 OF 2016 THE LEGAL
HEIRS OF THE DECEASED 1ST RESPONDENT

(THE RESPONDENTS 17 TO 19 REMAINED EXPARTE IN THE LOWER
APPELLATE COURT AND NOTICE DID NOT GO TO THEM IN CMP)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant an order of injunction restraining the respondents 1 to 3 herein from altering the physical features the suit property and also from cutting, removing the trees from the suit Property which is subject matter of suit in O.S.No.412 of 1998 on the file of 2nd Additional District Munsif Court Kuzhithurai pending disposal of the above Second appeal and thus render justice.

Prayer in SA(MD). 316/ 2011 :

To prefer this memorandum of grounds of Second Appeal before this Honourable Court against the judgment and decree dated 12.1.2010 of the learned Subordinate Judge, Kuzhithurai and made in A.S.No.117 of 2006 and cross appeal on his file reversing the judgment and decree dated 18.08.2006 of the learned II Additional District Munsif, Kuzhithurai made in O.S.No.412 of 1998 on his file.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MS.J.R.ANNIE ABINAYA, FOR M/S.J.ANANDHAVALLI, Advocate for the petitioner and of M/S.K.N.THAMPI, Advocate for R1 to R3 and of MR.K.SREEKUMARAN NAIR, Advocate for R4 and of MR.C.K.M.APPAJI, Advocate for R7 and of MR.B.CHRISTOPHER, Advocate for R6, 12 to 15 the court made the following order:-

This petition i.e., C.M.P(MD)No.8641 of 2017 has been taken out by the seventh respondent, i.e., Chandrasekharan Nair.

2.Ms.J.R.Annie Abinaya, learned counsel representing learned counsel on record for the petitioner is before this Court. Respondents 1 to 3 in this petition are appellants 1 to 3 respectively in the main second appeal and they are represented by Mr.K.N.Thampi, learned counsel, who is before this Court. Fourth respondent, Selvamoni Nadar, in the main second appeal is seventh respondent in the instant petition and Mr.B.Christopher learned counsel on record, is before this Court.

3.Under such circumstances, I deem it appropriate to extract the prayer in this petition along with schedule of property, which reads as follows:



"INJUNCTION PETITION

For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to grant an order of injunction restraining the respondents 1 to 3 herein from altering the physical features the suit property and also from cutting, removing the trees from the suit property which is subject matter of suit in O.S.No.412 of 1998 on the file of 2nd Additional District Munsif Court, Kuzhithurai pending disposal of the above second appeal and thus render justice.

SCHEDULE OF PROPERTY

Kanyakumari District, Vilavancode Taluk, Muthumuymmal Village (Kulappuram, Athencode, old Survey No.3819, 3538, new Survey No.419/8, 5 acre 28 cents Plot of 22 cents bounded or the south by southern one half, by the river on the east, on the west by Ankamari and Elankathara and on the north by the plot of Ramaswamy Nadar in the plaint A schedule property supra. Kavum Parakkadavum Purayidom land and all things appurtenant thereto.

Boundaries:

East to River,

South to Thalimuttam and Chemmonvila

West to Ankamari Elankathara

Vazhavilai Thokkavilagam".

4.Appellants 1 to 3 in the main second appeal, who are respondents 1 to 3 respectively, in this civil miscellaneous petition, have filed a common counter affidavit, dated 18.11.2017. Paragraph No.8 of the aforesaid common counter affidavit is of relevance and the same reads as follows:

"8.I respectfully undertake that we will not alter the physical features of the property, which is the subject matter of the suit in O.S.No.412 of 1998 on the file of the Court of the learned Second Additional District Munsif of Kuzhithurai, or cut and remove and living tree therefrom pending disposal of the above second appeal".

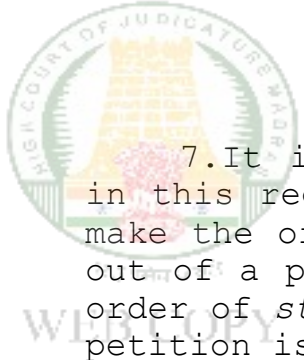
5.To be noted, taking note of the aforesaid averment in paragraph No.8 made by appellants 1 to 3 [respondents 1 to 3 in this petition], this Court had granted an order of *status quo* on 22.11.2017. The order of *status quo* granted by this Court, dated 22.11.2017, reads as follows:

"Counter filed by the respondent.

Heard both sides.

In view of the reasons stated and undertaking given by the petitioner, status quo as on date shall be maintained in respect of property by both parties till 06.12.2017".

6.While Mr.K.N.Thampi, learned counsel asserts that the averment contained in paragraph No.8 is being adhered to in letter and spirit, Ms.J.R.Annie Abinaya, learned counsel, disputes the same and submits that there is breach of the same.



7. It is open to the parties to take out suitable applications in this regard. So reserving the rights, I deem it appropriate to make the order of *status quo* absolute, as this second appeal arises out of a preliminary decree in a partition suit. Accordingly, the order of *status quo* granted on 22.11.2017, is made absolute and this petition is allowed/disposed of, on above terms.

sd/-
11/04/2018

/ TRUE COPY /

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

TO

- 1 THE SUBORDINATE JUDGE, KUZHITHURAI
- 2 THE II ADDITIONAL DISTRICT MUNSIF,
KUZHITHURAI.

GJM/CM/ASVM/17.4.18-4P-3C

ORDER
IN
CMP (MD) No.8641 of 2017
IN
SA (MD) No.316 of 2011
Date :11/04/2018 (3/5)