



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

Monday, the Twenty Third day of July Two Thousand Eighteen

WEB COPY

PRESENT
The Hon`ble Mr.Justice M.SUNDAR

CMP(MD) No.5436 of 2018
IN
SA No.1619 of 2000

1 SENTHUR PANDIAN NADAR
2 P.SUBRAMANIA NADAR
3 P.PALAVESAMUTHU NADAR
P. SHANMUGAVEL NADAR (DIED),
ESAKKIAMMAL (DIED)

4 T. MOOKKAMMAL
5 T. SELVAM
6 THAMARIKANI
7 ANNAKILI
8 CHELLATHAI
9 NAGARAJAN
10 S. KRISHNAN
11 CHENTUR KANI
12 SELVAM
13 PATHRAKALI
14 MUTHUMALI

... PETITIONERS/APPELLANTS 1 to 3,6,7,10 to 18

Vs

JEYPANDIA NADAR (DIED)

1 R.CHELLAKANI
2 R.PONMADASAMY
3 J.MANI
4 J.SEMBULINGAM

... RESPONDENTS 1 to 4/RESPONDENTS 2 to 5

5 T. PANNEER

6 THARASINGH (DIED)

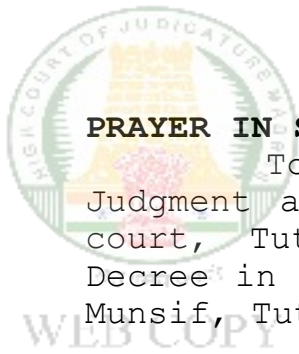
... RESPONDENTS 5 & 6/APPEKABTS 8 & 9

(5th Respondent herein is the 8th Appellant.

Now he is inabroad, hence he has been added as

5th respondent. Hence notice on him may dispense with)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of interim injunction restraining the respondents from interfering with out peaceful possession and enjoyment of the 1st schedule property, excluding 2nd schedule property to an extent of 27 cents, which is under the possession of respondents, which is the subject matter of the suit in O.S.No.247/1984 before the Principal District Munsif Court, Tuticorin.

**PRAYER IN SA No.1619 of 2000:**

To prefer this memorandum of Second Appeal against the Judgment and Decree in A.S.No.38 of 1989 on the file of the Sub-court, Tuticorin, dated 24.02.1992 confirming the Judgment and Decree in O.S.No.247 of 1984 on the file of the Principal District Munsif, Tuticorin dated 04.01.1989.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.H.ARUMUGAM, Advocate for the petitioner and of MR.K.SREEKUMARAN NAIR on behalf of the Respondents 1 to 4, the court made the following order:-

Appellants in the main second appeal are petitioners in the instant Civil Miscellaneous Petition (herein after referred to as 'CMP' for brevity).

2.Respondents in the main second appeal are respondents in the instant CMP.

3.Considering the nature of the prayer and rival submissions in this CMP, it may be necessary to briefly set out the scope of the suit in the trial Court and trajectory of the litigation.

4.Petitioners in the instant CMP were plaintiffs in the trial Court. Plaint consists of two Schedules, which read as follows:

'I SCHEDULE

*Tirunelveli District, Tuticorin Registration District
2.10 acres of lan in S.No.369/3 in Korampallam village
in Tuticorin Taluk, which is marked as ABCDEFGHIJKLMN in
the plan. Patta No.is 227.*

II SCHEDULE

*Tirunelveli District, Tuticorin Registration District
Southern 27 cents of land out of 2.10 acres of land in
S.No.369/3 in Korampallam village in Tuticorin Taluk
which is marked as AXX in the plan.'*

5.Prayer in the plaint reads as follows:

*'(14) It is therefore prayed that this Honourable Court
may be pleased to pass a decree in favour of the
plaintiffs,*

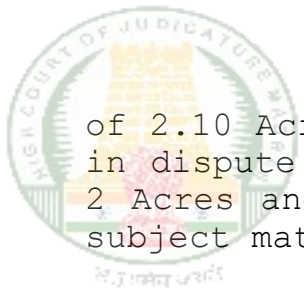
*a)declaring that the II schedule property belongs to the
plaintiffs*

*b)for recovery of possession of the II schedule property
from the defendants*

*c)for the costs of the suit from the defendants to the
plaintiffs and*

*d)granting such other reliefs as this Honourable Court
may deem fit in the circumstances of the case and render
justice.'*

<https://hcservices.courts.gov.in/hcservices/> of the aforesaid plaint Schedules (Schedules I and II) and prayer in the plaint will reveal that suit filed by petitioners in trial Court pertains to 27 cents of land from and out



of 2.10 Acres of land in survey No.369/3. In other words, it is not in dispute before this Court that entire survey No.369/3 admeasures 2 Acres and 10 cents and 27 cents from and out of the same is the subject matter of the litigation.

7.To be noted, from the Schedules supra, it will be clear that the property is in Korrapallam Village in Tuticorin Taluk in Tirunelveli District at the time of filing of the plaint way back in 1984. There is no dispute or disagreement before this Court that it is now in Tuticorin District.

8.The aforesaid 27 cents shall herein after be referred to as 'suit property' for the sake of convenience and clarity.

9.Petitioners did not succeed in getting a decree with regard to recovery of possession prayer in the Courts below and therefore instant second appeal before this Court.

10.Under such circumstances, alleging that the respondents taking advantage of pendency of the instant second appeal in this Court, are attempting to encroach upon the remaining extent in survey No.369/3, ie., 1.83 Acres the instant petition has been filed. Specific allegations in this regard have been made in paragraphs 7 and 8, which read as follows:

'7.I submit that the police also called for enquiry and the 2nd petitioner and his son appeared and explained the facts that we are not doing anything in the disputed 27 cents and we will recover the same after obtaining orders from the Court, however we cannot be prevented from enjoying our property, which is not in dispute under the guise of pendency of second appeal as the second appeal is only in respect of 27 cents in S.No.369/13 and 369/14 and not in S.No.369/15. However, the Inspector of Police did not incline to hear us and simply said that we shall not do anything in the property.'

8.I submit that there is no dispute in respect of 1.83 acres but the dispute in the appeal is only in respect of 27 cents and our right to enjoy the same cannot be interfered by any one including the respondents. But taking advantage of the pendency of the appeal the respondents are attempting to encroach the remaining area of the 1st schedule property also by interfering with our peaceful possession with help of police. Hence, I filed a writ petition restraining the police from interfering with the civil dispute and on the date of hearing the learned Government Pleader submitted that the police is no interfering, however, no order was ordered and the writ petition is pending.'



11. Respondents have filed counter affidavit.

12. I have heard Mr. H. Arumugam, learned Counsel on behalf of petitioners and Mr. Sreekumaran Nair, learned Counsel on behalf of respondents.

13. The scope of this CMP is significantly reduced by the stand taken by Mr. Sreekumaran Nair in the hearing today. It is submitted by Mr. Sreekumaran Nair, learned Counsel on behalf of respondents that respondents are not taking advantage of pendency of this second appeal in this Court and are not attempting to encroach upon the remaining area of 1.83 Acres in survey No. 369/3. It is also his emphatic and specific submission that it cannot be so, as the subject matter itself pertains to only 27 cents, ie., suit property.

14. With regard to anxiety of respondents that petitioners will disturb possession of respondents in the suit property, ie., 27 cents (schedule II in the plaint), Mr. H. Arumugam, learned Counsel submits on behalf of petitioners in this CMP that they have not disturbed the possession and they would not do so with regard to suit property, ie., scheduled II in the plaint, or in other words, 27 cents in survey No. 369/3, till disposal of the second appeal.

15. Though obvious, it is made clear that any further action in this regard will be subject to the outcome of second appeal.

16. For the purpose of abundant clarity, it is made clear that the scope of this order is as follows:

a. Respondents in this CMP will not make any attempt to encroach upon or disturb the possession of the petitioners with regard to 1.83 Acres in schedule I of the plaint property, ie., excluding schedule II.

b. Petitioners will not disturb the possession of the respondents with regard to schedule II of the plaint.

17. To be noted, Schedules I and II of the plaint have been extracted and reproduced supra.

18. It is submitted by both the learned Counsel before this Court that parties to this second appeal will remain bound by this order, till disposal of the second appeal.

19. Recording the above submissions, the instant CMP is disposed of.

sd/-
23/07/2018

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TO

1 THE SUBORDINATE JUDGE, TUTICORIN

2 THE PRINCIPAL DISTRICT MUNSIF, TUTICORIN

+1. C.C. to MR.K.SREEKUMARESAN NAIR, Advocate SR.No.13739

ORDER

IN

CMP (MD) No.5436 of 2018

IN

SA No.1619 of 2000

Date :23/07/2018 (1/3)

PK/VR/SAR-4/16.08.2018 : 5P/4C