



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Friday, the Eighth day of March Two Thousand and Nineteen
CORAM:

The Hon`ble Mrs.Justice J.Nisha Banu
CMP(MD) Nos.2704,2705 and 2706 of 2018

in

SA(MD) No.92,93 and 94 of 2017

P.DURAI PANDI... Petitioner in CMP(MD) Nos.2704 and 2706 of 2018

KANAGARAJ ... Petitioner in CMP(MD) No.2705 of 2018

Vs

VIRUDHUNAGAR, THIRUMANGALAM,
PALAYAMPATTI, KOVILANKULAM, PERIYAKARISALKULAM
5 VILLAGES, SRIMAN NARAYANAMADAM PANICKER
COMMUNITY PROPERTY'S PARIPALANA MANAGING COMMITTEE
THROUGH THEIR TRUSTEE MR.JEYAPANDIAN ... Respondent in all CMPs

Common Prayer in CMPs:

These Civil Miscellaneous Petition filed under Section 41 Rule 19 of Civil Procedure Code, to restore the Second Appeals in SA(MD) Nos.92,93 and 94 of 2017 against the Respondent which were dismissed for default on 20/02/2018

Prayer in SA(MD). 92/ 2017 :

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree made in AS.No.5/2015 dated 13/07/2016 on the file of the Subordinate Judge, Virudhunagar reversing the Judgment and Decree made in OS.No.280/2008 dated 19/07/2013 on the file of the District Munsif Court, Virudhunagar.

Prayer in SA(MD). 93/ 2017 :

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree made in AS.No.8/2014 dated 13/07/2016 on the file of the Subordinate Judge, Virudhunagar reversing the Judgment and Decree made in OS.No.81/2007 dated 19/07/2013 on the file of the District Munsif Court, Virudhunagar.

Prayer in SA(MD). 94/ 2017 :

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgement and Decree made in AS.No.11/2014 dated 13/07/2016 on the file of the Subordinate Judge, Virudhunagar reversing the Judgment and Decree made in OS.No.5/2007 dated 19/07/2013 on the file of the District Munsif Court, Virudhunagar.

ORDER : These petitions are coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and the petitioners have not appeared either in person or through their counsel and upon hearing the arguments of Mr.P.Achimoola Pandian, Advocate for the Respondent, this court made the following order:-



These petitions have been filed by the petitioners seeking to set aside the dismissal order dated 20.02.2018 made in S.A(MD)Nos.92 to 94 of 2017.

2.This Court by order dated 26.07.2018, set aside the dismissal orders dated 20.02.2018 and restored the second appeals on file, subject to the condition that the appellant in each appeal shall pay a sum of Rs.5,000/- to the respondent within a period of two weeks from the date of receipt of a copy of that order. The order copy was despatched on 03.10.2018.

3.When the matter came up for hearing today, there is no representation on behalf of the petitioner in all the petitions. In the cause list, it is mentioned that cost memo not filed.

4.The learned counsel for the respondent in all the petitions submits that earlier the second appeals were dismissed for default on 04.04.2017 and the same were restored to file on the undertaking of the petitioners to argue the appeals. This is the second time and the cost was also not paid to the respondent. He further submits that execution petitions have been filed before the Trial Court and possession was taken and the execution petitions were closed on 07.03.2019.

5.Perusal of records shows that earlier S.A(MD)Nos.92 to 94 of 2017 were dismissed for default, for the non-appearance of the petitioners / appellants on 04.04.2017. Thereafter, the petitioners filed C.M.P(MD)Nos.10914, 7895 and 7896 of 2017 for restoration of the above second appeals and the same were allowed and the second appeals were restored to file on 25.01.2018, on the undertaking given by the learned counsel for the petitioners that he will argue the appeals. Thereafter, on the hearing on 15.02.2018, there was no representation for the appellants and therefore, the second appeals were posted on 20.02.2018 for dismissal. Even on 20.02.2018 also, there was no representation on behalf of the appellants. Therefore, the second appeals were dismissed for default on that day. The present petitions have been filed for setting aside the dismissal order dated 20.02.2018, which in my opinion is only as an abuse of process of the Court. The learned counsel for the respondent would also represent that possession has been taken and execution petition is also closed. Considering the present circumstances of the case, the above petitions are dismissed. No costs.

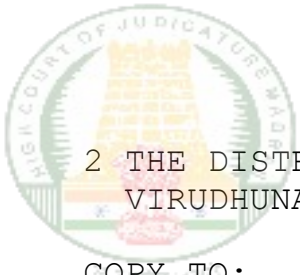
Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-)

TO



2 THE DISTRICT MUNSIF,
VIRUDHUNAGAR.

COPY TO:

WEB COPY

The Section Officer, V.R Section,
Madurai Bench of Madras High Court,
Madurai (2 copies)

+1cc to Mr.P.Athimoolapandian, Advocate, SR.No.4595

ORDER DATE:08.03.2019

CMP(MD) Nos.2704,2705 and 2706 of 2018
in

SA(MD) Nos.92,93 and 94 of 2017

GIVING DIRECTION ETC., AS

STATED WITHIN

SP/10.04.2019/ 3P/6C