



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) .No.1298 of 2016 and
C.M.P. (MD) No.6216 of 2016

Pothumani

... Petitioner/Petitioner/
Petitioner/Assignee of Plaintiff

Vs.

1. A.Kasammal
2. A.Annadurai
3. A.Anbu
4. A.Ashta Rani

... Respondents 1 to 4/
Respondents 1 to 4/
Respondents 1 to 4/
Defendants 1 to 4

5. M.Ayyankalai
6. A.Murugesan @ Amarendiran
7. A.Malar
8. A.Shanthi

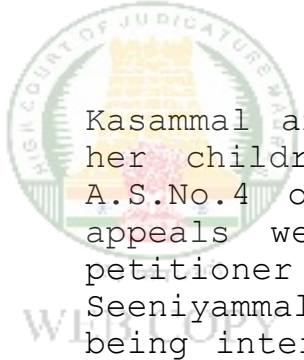
... Respondents 5 to 8/
Respondents 5 to 8/
Respondents 5 to 8

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order passed in E.A.No.166 of 2011 in E.P.No.44 of 2011 in O.S.No.370 of 1987 on the file of the District Munsif Court, Periyakulam, dated 30.09.2015.

For Petitioner : Mr.Prabhu Rajadurai,
for Mr.R.Maheswaran.
For R-1 to R-3& R-6 : Mr.A.Sivasubramanian

O R D E R

One Seeniyammal filed O.S.No.370 of 1987 before the District Munsif Court, Periyakulam. One Kasammal and her three children were shown as defendants in the said suit. The suit was decreed on 29.07.1989 after a contest. It is relevant to note that the defendants in O.S.No.370 of 1987 also filed an independent suit, namely, O.S.No.315 of 1987 against Seeniyammal and one Rasuthevar. While the suit filed by Seeniyammal was decreed, the suit filed by



Kasammal and her children were dismissed. Therefore, Kasammal and her children filed two appeals, namely, A.S.No.37 of 1989 and A.S.No.4 of 1990 before the Sub Court, Periyakulam. Both the appeals were dismissed on 19.12.1991. Thereafter, the Revision petitioner herein purchased the property in question from Seeniyammal on 16.05.1996. Contending that her enjoyment rights are being interfered with, E.P.No.44 of 2011 was filed by the Revision petitioner herein. Since the Revision petitioner is a subsequent purchaser, she filed E.A.No.166 of 2011 for permitting her to maintain E.P. The Court below dismissed the E.A. by order dated 30.09.2015. The correctness of the said order is questioned in this Civil Revision petition.

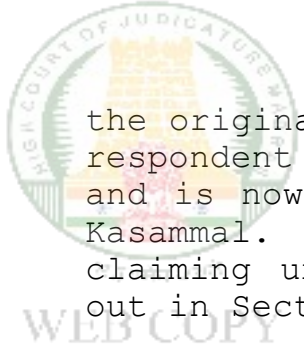
2. Heard the learned counsel on either side.

3. The Executing Court chose to show the door to the Revision petitioner at the threshold and did not permit her to maintain the E.P. for two simple reasons. The first reason is that the Revision petitioner is a subsequent purchaser and that the decree has not been assigned in her favour and that therefore, Order 21 Rule 16 of C.P.C. cannot be invoked by the Revision petitioner. The second reason is that in the E.P, the other children of Kasammal are also shown as respondents and that they are not the parties to the suit proceedings.

4. I am of the view that the executing Court was right in holding that Order 21 Rule 16 of C.P.C. cannot be invoked by the Revision petitioner. Obviously, the decree has not been assigned in favour the Revision petitioner. But then, on that ground E.A.No.166 of 2011 or E.P.No.44 of 2011 cannot be dismissed. The learned counsel appearing for the Revision petitioner rightly drew my attention to Section 146 of C.P.C. The said provision reads as follows:-

"146. Proceedings by or against representatives - Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him."

5. In this case, it is beyond dispute that the Revision petitioner is claiming under the original decree holder. Therefore, she is definitely entitled to file an E.P. for enforcing the decree granted in favour of her vendor. The decree is one for perpetual injunction. According to Article 136 of the Limitation Act, 1963, an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation. Since the E.A. cannot be said to be time barred, the right of the Revision petitioner who is the subsequent purchaser cannot also be questioned. It is true that in the E.P, apart from



the original defendants, four more were added as parties. The fifth respondent is none other than the husband of the first respondent and is now no more. The remaining three are only the children of Kasammal. Obviously, they cannot have a higher right. They are also claiming under Kasammal only. Therefore, all the ingredients set out in Section 146 of C.P.C. are squarely fulfilled in this case.

6. In this view of the matter, the order impugned in this Civil Revision petition is set aside. The Civil Revision petition stands allowed, accordingly.

7. The executing Court shall restore E.P.No.44 of 2011 and permit the Revision petitioner herein to pursue the same. The execution petition shall be disposed of on merits and in accordance with law. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-i)

To

1. The District Munsif,
Periyakulam.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

PMU

TE/BK/SAR-1 : 14/12/2018 : 3P/4C

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