



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

Monday, the Twenty Third day of July Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP(MD) No.6588 of 2018

IN

SA No.1619 of 2000

1 JAYAPANDIA NADAR (DIED)
2. R.CHELLAKANI
2 R.CHELLAKANI
3 R.PONMADASAMY
4 J.MANI
5 J.SEMBULINGAM

... PETITIONERS/RESPONDENTS 2 to 5

Vs

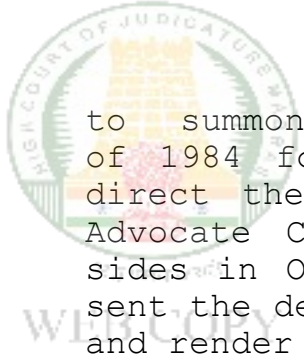
1 SENTHUR PANDIAN NADAR
2 P.SUBRAMANIA NADAR
3 P.PALAVESAMUTHU NADAR
4 P.SHANMUGAVEL NADAR (DIED)
5 ESAKKIAMMAL (DIED)
6 T.MOOKKAMMAL
7 T.SELVAM
8 T.PANNEER
9 THARASINGH (DIED)

... LR OF 5th APPELLANT/PROPOSED
RESPONDENTS 6 to 9/APPELLANTS

10 THHAMARAIAKANI
11 ANNAKILI
12 CHELLATHAI
13 NAGARAJAN
14 S.KRISHNAN
15 CHENTUR KANI
16 SELVAM
17 PATHRAKALI
18 MUTHUMALI

... LR OF THE 4TH APPELLANT/
PROPOSED RESPONDENTS 10 to 18/APPELLANTS

(5th Respondent herein is the 8th Appellant.
Now he is in abroad, hence he has been
added as 5th Respondent. Hence notice on
Him may dispense with)



to summon Mr.K.Thiruvadi, the Advocate Commissioner in O.S.No.247 of 1984 for the purpose of examining him or in the alternative direct the Principal District Munsif, Thoothukudi to examine the Advocate Commissioner giving opportunity to the counsel on both sides in O.S.No.247 of 1984 to cross examine the Commissioner and sent the deposition to this Honourable Court within a specified time and render justice.

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.K.SREEKUMARAN NAIR, Advocate for the petitioner and of MR.H.ARUMUGAM, Advocate for R1 to R3, R6 to R8 & R10 to R18, the court made the following order:-

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

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

3.Respondents in the instant CMP are plaintiffs in trial Court, ie., in OS.No.247 of 1984 on the file of District Munsif's Court, Tuticorin.

4.Schedules to the plaint reads 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

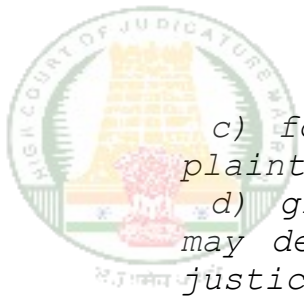
Tirunelveli District, Tuticorin Registration District Southern 27 cents of land out of 2.10 acres of land in S.No.369/3 in Korampallam village in Tuticorin Taluk which is marked as AXX in the plan.'

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.'

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6. From the extract supra, it will be clear that Schedule II (27 cents) is a part of Schedule I. It also becomes clear that Schedule II is the suit property.

7. Respondents in the instant CMP, who did not succeed in getting a decree with regard to recovery of possession prayer are before this Court in the main second appeal.

8. Be that as it may, it is not in dispute in the hearing today that respondents in the instant CMP took out a petition for appointment of Advocate Commissioner in the instant second appeal vide CMP No.1 of 2009, the same was ordered, an Advocate Commissioner was appointed inter alia with a direction to make a local inspection with the help of jurisdictional Surveyor and file a report. It is also no in dispute that the report has been filed and the same forms part of record of this Court.

9. Under such circumstances, petitioners in the instant CMP have come up with this CMP with the following prayer:

'For the reasons stated in the accompanying affidavit, it is therefore prayed that this Honourable Court may be pleased to summon Mr.K.Thiruvadi, the Advocate Commissioner in O.S.No.247 of 1984 for the purpose of examining him/or in the alternative direct the Principal District Munsif, Thoothukudi to examine the Advocate Commissioner giving opportunity to the Counsel on both sides in O.S.No.247 of 1984 to cross examine the Commissioner and send the deposition to this Hon'ble Court within a specified time and render justice.'

10. I have heard Mr.Sreekumaran Nair, learned Counsel for petitioners and Mr.H.Arumugam, learned Counsel for respondents.

11. In the light of the prayer, Mr.H.Arumugam, very fairly submits that he has no serious objection or opposition to this petition for the Advocate Commissioner being examined in the trial Court with opportunity to both sides to cross examine the Advocate Commissioner.

12. Therefore, Principal District Munsif Court, Thoothukudi is directed to do the needful for the Advocate Commissioner Mr.K.Thiruvadi being examined in O.S.No.247 of 1984 with opportunity to Counsel on both sides to cross examine the Advocate Commissioner.

<https://hcservices.ecourts.gov.in/hcservices/>

13. The aforesaid exercise shall be completed by the trial Court



within six weeks from the date of receipt of a copy of this order. The deposition shall be sent to this Court along with a report (report if necessary) within a fortnight therefrom.

14. The instant CMP is ordered on above terms.

15. List the main second appeal after ten weeks.

sd/-
23/07/2018

/ TRUE COPY /

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

TO

1 THE SUBORDINATE JUDGE, TUTICORIN

2 THE PRINCIPAL DISTRICT MUNSIF, TUTICORIN

+1. C.C. to Mr.K.SREEKUMARAN NAIR Advocate SR.No.13738

ORDER
IN
CMP (MD) No.6588 of 2018
IN
SA No.1619 of 2000
Date :23/07/2018 (2/3)

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