



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

Friday, the Third day of August Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP(MD) No.7333 of 2018 and MP(MD)No.2 of 2006
IN
SA(MD) No.1097 of 2006

S.SUNDARAMOORTHY

... PETITIONER/ PETITIONER/
APPELLANT
IN CMP(MD) No.7333 of 2018
IN SA(MD) No.1097 of 2006

S.SUNDARAMOORTHY

... PETITIONER/ APPELLANT
IN MP(MD)No.2 of 2006
IN SA(MD) No.1097 of 2006

Vs

1 S.NARANA VADIVAMMAL (DIED)

2.THE COMMISSIONER,
RAJAPALAYAM MUNICIPALITY, RAJAPALAYAM.

3 SUBRAMANIAN

4 JEYA GURUNATHAN

... RESPONDENTS/ RESPONDENTS/
RESPONDENTS
IN CMP(MD) No.7333 of 2018
IN SA(MD) No.1097 of 2006

1 S.NARANA VADIVAMMAL (DIED)

2.THE COMMISSIONER,
RAJAPALAYAM MUNICIPALITY, RAJAPALAYAM.

3 SUBRAMANIAN

4 JEYA GURUNATHAN

... RESPONDENTS/ RESPONDENTS
IN MP(MD)No.2 of 2006
IN SA(MD) No.1097 of 2006

(R3 & R4 ARE BROUGHT ON RECORD AS LR's OF THE DECD. R1
VIDE ORDER DATED:20.02.2013 & MADE IN MP(MD)NOS.1 TO 3/10
BY SA(MD)NO.1097/2006 BY RBJ)

PRAYER IN IN CMP(MD) No.7333 of 2018 IN SA(MD) No.1097 of 2006:

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

Petitioner praying that in the circumstances stated therein and
in the affidavit filed therewith the High Court may be pleased to



extend the interim order passed in M.P.No.2 of 2006 dated 17.11.2006 in the above SA pending disposal of the second appeal and pass further order and render justice.

Prayer in MP(MD). 2/ 2006 in SA(MD).1097/2006 :

To stay the operation of the Judgment and Decree in O.S.349/1995 dated 03/02/2003 on the file of Additional District Munsif Court, Srivilliputhur as confirmed in A.S.25/2003 dated 28/07/2005 on the file of Principal District Court, Virudhunagar District at Srivilliputhur pending disposal of the Second Appeal and pass further order and render justice.

Prayer in SA(MD). 1097/ 2006 :

The above named appellant begs to prefer this Memorandum of Second Appeal against the Judgment and Decree in AS.25/2003 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur dated 28/07/2005 confirming the Judgment and Decree in OS.349/1995 on the file of Additional District Munsif Court, Srivilliputtur, dated 03/02/2003.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.S.VENKATESH, Advocate for the petitioner in both the petitions and of Mr.J.PAREKH KUMAR, Advocate for R2 and Mr.A.UMAPATHI, Advocate for Mr.M.THIRUNAVUKKARASU, Advocate for R3 & R4 in both the petitions, the court made the following order:-

There is one appellant in the main second appeal. Sole appellant in the main second appeal is the lone petitioner in the instant 'civil miscellaneous petition' [hereinafter referred to as 'CMP' for brevity]. There are four respondents in the main second appeal. Respondents 1 to 4 in the main second appeal are respondents 1 to 4 respectively in the instant CMP. To be noted, respondent No.1, S.Narayana Vadivammal is no more and respondents 3 and 4 are on record as her legal heirs.

2.Mr.S.Venkatesh, learned counsel is before this Court on behalf of the petitioner. On behalf of the second respondent Rajapalayam Municipality, Mr.J.Parekh Kumar, learned counsel, is before this Court. On behalf of respondents 3 and 4, Mr.A.Umapathi, learned counsel representing counsel on record, is before this Court.

3.This CMP turns on a very narrow campus . There is no dispute or disagreement between the counsel before this Court that the decree which has been called in question in the main second appeal contains a mandatory injunction limb also. It is also not in dispute that an execution petition has been launched in the jurisdictional executing court, i.e., E.P.No.96 of 2006 inter-alia for executing the mandatory injunction limb of the decree, which is subject matter of the instant second appeal.



4. It is also not in dispute that at the time of inception of the main second appeal, this Court vide order, dated 17.11.2006, passed an interim order of status quo in M.P(MD)No.2 of 2006. The said order reads as follows:

"The learned counsel for the petitioner/appellant has submitted that the Execution Proceedings are culminated in execution of the warrant and hence, the order of status quo may be considered.

2. The learned counsel for the respondents takes notice and requests two weeks time to file counter. Accordingly, two weeks time is granted for filing counter.

3. In the meanwhile, status quo as on today shall be maintained.

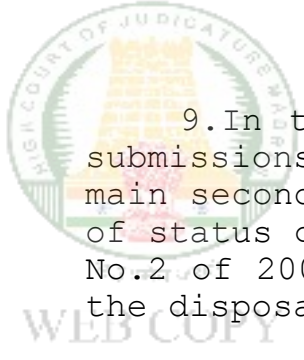
Post after two weeks".

5. Under the aforesaid circumstances and in the light of the aforementioned undisputed scenario, the instant petition has been taken out with a prayer to extend the aforesaid interim order, dated 17.11.2006, on the ground that aforesaid execution petition is being pursued and that the same is listed today, i.e., 03.08.2018, for arguments. Learned counsel for the petitioner submits that irreparable loss and an irreversible situation will be caused if the mandatory injunction limb of the decree is executed pending second appeal. Learned counsel for the second respondent, i.e., Rajapalayam Municipality submits that it is necessary that the construction put up in the pathway is removed. However, learned counsel for the respondents 3 and 4 very fairly submits that execution of the mandatory injunction limb of the decree can be pursued only after (if it be so) and obviously subject to the outcome of the main second appeal.

6. Be that as it may, interim order dated 17.11.2006 granted by this Court has been extracted supra. This Court is informed that there is some difficulty in interpreting the interim order and saying conclusively whether it is for a period of two weeks or it continues to operate. It is also submitted that the instant CMP has become necessary owing to such difficulty also.

7. This Court has no difficulty in accepting the submission that a decree for mandatory injunction if executed pending second appeal in which the decree has been called in question, the situation will become irreversible. In other words, if the appellant ultimately succeeds it may be too late in the day to reverse the scenario and put the clock back. On the contrary, if the petitioners in the execution petition wait for the outcome of the second appeal, it will avoid the aforesaid irreversible situation.

8. All the learned counsel before this Court undertake to argue the main second appeal in the second week of August, 2018.



9. In the light of the narrative supra and in the light of the submissions made by all the learned counsel that they will argue the main second appeal in the second week of August, 2018, interim order of status quo already granted by this Court on 17.11.2006 in M.P(MD) No.2 of 2006 is extended and the same will continue to operate till the disposal of the main second appeal.

10. C.M.P(MD) No.7333 of 2018 is disposed of on above terms. In the light of the discussion supra, M.P(MD) No.2 of 2006 is closed.

11. List the main second appeal under the caption 'FOR ARGUMENTS' in the second week of August, 2018.

sd/-
03/08/2018

/ TRUE COPY /

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

TO

1. THE PRINCIPAL DISTRICT JUDGE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR
2. THE ADDITIONAL DISTRICT MUNSIF,
SRIVILLIPUTTUR.

ORDER
IN
CMP(MD) No.7333 of 2018 and
MP(MD) No.2 of 2006
IN
SA(MD) No.1097 of 2006
Date : 03/08/2018

MS/PN/SAR-4/03.08.2018/4P.3C