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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.S.(MD)Nos.72, 73, 74 of 2013 &

WP(MD)No.11691 of 2016

and

CMP.(MD)Nos.5119 to 5121 of 2016, 12151 to 12153 of 2016,

8970 to 8972 of 2016 & 13866 of 2016

MP(MD)Nos.2 to 5 of 2013

AS(MD)No.72 of 2013

1.Velusamy (died)

2.Sakunthala

2nd appellant is recorded as the legal heirs of deceased 1st appellant, vide Court order dated 22.02.2017 made in CMP(MD)No.10966 of 2016

... Appellants

Vs

Rajan(since deceased)

1.Jeyaraman

Srinivasan (since deceased)

2.Sakunthala

3.Joint Sub Registrar,
Virudhunagar

4.Rajmohan @ Subbiah

5.Chandrasekaran

6.Balaji

7.Sivakumar

8.A.R.V.Jegadeesan (died)

9.Radhalakshmi - (cause title accepted, vide order dated
18.04.2013,

made in MP(MD) Nos.1, 1 & 1 of 2013)

10.Vasanthi

11.Swathi

12.Abarna

2nd respondent is transposed as 2nd appellant, vide Court
order dated 22.02.2017 made in CMP(MD)No.10965 of 2016

Respondents 10 to 12 are brought on record as legal heirs of the
deceased 8th respondent, vide Court order dated 21.11.2017.

... Respondents

PRAYER : Appeal Suit is filed under Section 96 of the Code of Civil
Procedure, to set aside the judgment and decree dated 23.08.2012,
made in O.S.No.154 of 2008 on the file of the learned Principal
District Judge, Virudhunagar District at Srivilliputtur.

For Appellants : Mr.R.Narayanan

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

For Respondents : Mr.S.Natarajan - R1



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: Mr.PT.S.Narendravasan - R4 to R7
Mr.R.Subramanian - R9
for M/s.J.Anandkumar
: Mr.S.T.Sasidharan Tamil Kani -R10 to R12
: Mr.M.Murugan - R3
Government Advocate

AS (MD)No.73 of 2013

1.Velusamy (died)

2.Sakunthala

2nd appellant is recorded as the legal heirs of deceased 1st appellant, vide Court order dated 22.02.2017 made in CMP (MD)No.10968 of 2016

... Appellants

Vs.

1.Sakunthala

Rajan (since deceased)

2.Jeyaraman

Srinivasan (since deceased)

3.A.R.V.Jegadeesan (died)

4.Radhalakshmi (cause title accepted, vide order dated 18.04.2013, made in MP (MD) Nos.1, 1 & 1 of 2013)

5.Vasanthi

6.Swathi

7.Abarna

1st respondent is transposed as 2nd appellant, vide Court order dated 22.02.2017 made in CMP (MD)No.10967 of 2016 Respondents 5 to 7 are brought on record as legal heirs of the deceased 3rd respondent, vide Court order dated 21.11.2017.

... Respondents

PRAYER : Appeal Suit is filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 23.08.2012, made in O.S.No.8 of 2007 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputtur.

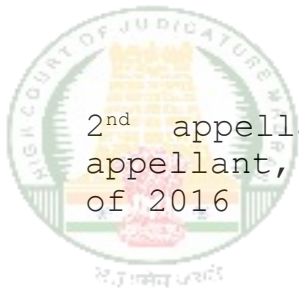
For 2nd Appellant : Mr.R.Narayanan

For Respondents : Mr.S.Natarajan - R2

: Mr.S.T.Sasidharan Tamil Kani -R5 to R7

: R4 (No appearance)

AS (MD)No.74 of 2013



2nd appellant is recorded as the legal heirs of deceased 1st appellant, vide Court order dated 22.02.2017 made in CMP(MD)No.10970 of 2016

... Appellants

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Vs.

Srinivasan (since deceased)

1.Rajmohan @ Subbiah

2.Veluchamy @ Ravi

3.Chandrasekaran

4.Balaji

5.Sivakumar

6.Sakunthala

7.Radhalakshmi (cause title accepted, vide order dated 18.04.2013, made in MP(MD) No.1 of 2013)

6th respondent is transposed as 2nd appellant, vide Court order dated 22.02.2017 made in CMP(MD)No.10969 of 2016

... Respondents

PRAYER : Appeal Suit is filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 23.08.2012, made in O.S.No.11 of 2009 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputtur.

For 2nd Appellant : Mr.R.Narayanan

For Respondents : Mr.PT.S.Narendravasan - R1 to R5
: Mr.S.Natarajan - R7

WP(MD)No.11691 of 2016

S.Soundaravalli

... Petitioner

Vs.

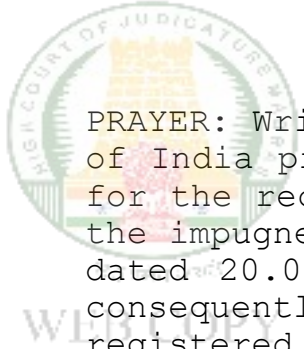
1.The Inspector General of Registration,
Registration Department,
Poonamallee High Road, Chennai.

2.The District Registrar,
Registration Department,
Virudhunagar District,
Virudhunagar.

3.The Joint Sub Registrar No.II,
Virudhunagar.

4.S.Jeyabalan

... Respondents



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 3rd respondent in connection with the impugned order passed by him in his proceedings in Ni.28 of 2013 dated 20.06.2016 and quash the same as illegal and arbitrary and consequently, direct the 3rd respondent to cancel the sale deed registered in document No.4204 of 2016, dated 27.06.2016.

For Petitioner : (No appearance)

For Respondents : Mr.Murugan - R1 to R3
Government Advocate
: Mr.R.Subramanian - R4
for M/s.J.Anandkumar

COMMON JUDGMENT

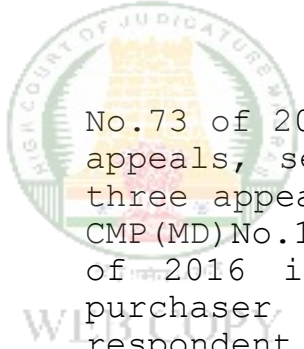
AS.(MD)No.72 of 2013 has been filed by the plaintiff in O.S.No.154 of 2008 on the file of the Principal District Court, Virudhunagar, aggrieved by the judgment and decree dated 23.08.2012.

2.AS.(MD)No.73 of 2013 has been filed by the 1st defendant in O.S.No.8 of 2007 on the file of the Principal District Court, Virudhunagar, aggrieved by the judgment and decree dated 23.08.2012.

3.AS.(MD)No.74 of 2013 has been filed by the 6th defendant in O.S.No.11 of 2009 on the file of the Principal District Court, Virudhunagar, aggrieved by the judgment and decree dated 23.08.2012.

4.O.S.No.8 of 2007 and 11 of 2009 had been filed seeking partition and separate possession. The two suits were decreed and Velusamy the 1st defendant in O.S.No.8 of 2007, who was also the 6th defendant in O.S.No.11 of 2009, had preferred the first appeals A.S.(MD)Nos.73 and 74 of 2013. Simultaneously, another suit in O.S.No.154 of 2008 had been filed by the said Velusamy seeking declaration of title. This was also taken up and that suit was dismissed and consequently, he filed A.S.(MD) No.72 of 2013. These three first appeals were directed to be heard along with WP(MD) No.11691 of 2016, which also related to the same subject matter and which had been filed seeking to call for the records of the Joint Sub Registrar No.II, Virudhunagar and quash his proceedings dated 20.06.2016 and direct the 3rd respondent to cancel the sale deed registered in document No.4204 of 2016 dated 27.06.2016.

5.Pending the first appeals, Velusamy, the appellant in all the three appeals died. Thereafter, Sakunthala, who said to be the first cousin sister of Velusamy was transposed as 2nd appellant to prosecute the first appeals. It must be mentioned that she was the 2nd respondent in AS.(MD)No.72 of 2013, the 1st respondent in AS(MD)



No.73 of 2013 and 6th respondent in AS(MD)No.74 of 2013. Pending the appeals, several applications came to be filed in each one of the three appeals. CMP(MD) No.12151 of 2016 in AS(MD)No.72 of 2013 and CMP(MD)No.12152 of 2016 in AS(MD)No.73 of 2013 and CMP(MD)No.12153 of 2016 in AS(MD)No.74 of 2013 had been filed to implead the purchaser of the suit property by name Jayabalan as a proposed respondent in the appeal. Those applications are pending.

6. Similarly, CMP(MD)No.5119 of 2016 in AS(MD)No.72 of 2013, CMP(MD)No.5120 of 2016 in AS(MD)No.73 of 2013, CMP(MD)No.5121 of 2016 in AS(MD)No.74 of 2013, have been filed by Uma Maheshwari, wife of Late. Ganesan and her daughter Varshashri, who was a minor and represented by her mother Uma Maheshwari to implead themselves as parties in the first appeal. These petitions were necessitated, since Ganesan who had independently filed MP(MD)No.3 of 2013 in AS(MD)No.72 of 2013 to implead himself as a party in the appeal, died. Apart from these applications, Ganesan had also filed MP(MD)No.4 of 2013 which is pending in AS(MD)No.72 of 2013, MP(MD)No.2 of 2013 seeking interim injunction and MP(MD)No.5 of 2013 to vacate the interim injunction are also pending in AS(MD)No.72 of 2013.

7. While filing the writ petition in WP(MD)No.11691 of 2016, the petitioner had filed WMP(MD)Nos.8970 to 8972 of 2016 for stay, direction and injunction. Those petitions are pending. Thereafter, WMP(MD)No.13866 of 2016 had also been filed by a third party seeking to implead himself in the writ petition.

8. In all the three suits from which the first appeals emanate, one V.K.Srinivasan was a party. He was alive, during the trial of the suit, when arguments were advanced and when the suit was reserved for judgment. However, after that, very unfortunately, he died. Still the learned Principal District Judge, Virudhunagar proceeded to pronounce judgment. Thereafter, when the first appeals were filed, legal representatives had to represent V.K.Srinivasan. An application was filed to accept the cause title showing Ratha Lakshmi as a party. This has been challenged by Ganesan claiming that he is the only person eligible to represent V.K.Srinivasan. The petition to implead him was pending in MP(MD)No.3 of 2013. Unfortunately, he also died. This necessitated his wife and minor daughter to file CMP(MD)No.5119 to 5121 of 2016 as stated above, in the three first appeals respectively. Their status is being challenged by the respondents in the application on the ground that in a corollary suit a judicial order had been pronounced deciding the legal representative in an interlocutory application. Be that as it may, O.S.No.83 of 2018 has been independently filed on the file of the Principal District Munsif Court, Aruppukkottai by Uma Maheshwari and her daughter Varshashri seeking a judgment and decree to declare them as the legal heirs of V.K.Srinivasan and for consequential relief of injunction against the respondents from claiming such relief. During the course of arguments my predecessor had thought it fit to call for the records in O.S.No.83 of 2018 from the Principal District Munsif Court, Aruppukkottai. In the



meanwhile, three affidavits has been filed by Sakunthala who has been transposed as appellants in all the three appeals seeking permission to withdraw the first appeal.

9.The learned Counsel representing Sakunthala / 2nd appellant has also made necessary endorsement in the grounds of appeal in all the three appeals which is as follows :

"I withdraw this first appeal as affidavit filed by appellant Sakunthala."

10.In the affidavit filed by Sakunthala, she had stated as follows :

"1.I am the second appellant herein and as such I am well acquainted with the facts of the case.

2.The main appeal had been filed against the common judgment dated 23.08.2012 and the decree passed in O.S.No.154 of 2008 on the file of the Principal District Court, Virudhunagar District at Srivilliputhu.

3.I am hereby withdrawing the appeal and the same may be dismissed as withdrawn without costs."

11.Permitting withdrawal of the appeal has posed further questions to be answered namely the status of Uma Maheshwari and her daughter and more particularly that of her husband Ganesan who claim that they alone can represent the estate of V.K.Srinivasan. However, O.S.No.83 of 2018 has been filed seeking that relief. It is only advisable that the learned Principal District Munsif, Aruppukkottai is directed to examine that issue. The defendants therein can take up any defence legally available for them and are entitled to move any application in the nature of Order 7 Rule 11 or of any other nature and the learned Principal District Munsif, Aruppukkottai is directed to examine all the issues in accordance with law.

12.I make it very clear that I have not adjudicated on the stand of the respective parties relating to the rival claims to the estate of V.K.Srinivasan, That issue will have to be decided in O.S.No.83 of 2018 on the file of the learned Principal District Munsif, Aruppukkottai and the plaintiffs and the defendants therein are at liberty to either assert or dispute their status in the manner known to law in the said Court.

13.Consequently, all the three first appeals are dismissed as withdrawn and all the connected Miscellaneous petitions are closed. No costs. It is made clear that the fact Radha Lakshmi had been impleaded to represent V.K.Srinivasan in the first appeal, would not deny Uma Maheshwari and her daughter Varshashri, from seeking such relief and impleading Radha Lakshmi would not give any advantage to her vis-a-vis the claim of Uma Maheshwari and her daughter Varshashri.



14.It is also represented by all the learned Counsels that since the first appeals are withdrawn, the relief sought for in the writ petition has become infructuous. In view of that fact, the writ petition is also dismissed as infructuous. Consequently, the connected Miscellaneous petitions are closed

Sd/

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar(CS-IV)

To

1.The Principal District Judge,
Virudhunagar District
at Srivilliputtur.

2.The Principal District Munsif, Aruppukkottai

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1cc to Mr.S.T.SASIDHARAN TAMILKANI, Advocate, SR.No. 92548

+1cc to Mr.S.NATARAJAN, Advocate, SR.No.92727

+1cc to Mr.R.NARAYANAN, Advocate, SR.No. 93142

+4cc to Mr.J.ANANDKUMAR, Advocate, SR.No.93005

A.S. (MD) Nos.72, 73, 74 of 2013 &
WP (MD) No.11691 of 2016
29.10.2018

RM

KK/RP/SAR-4/08.11.2018/7P-12C