

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2810 of 2006
and
M.P.Nos.1, 2 & 3 of 2006

S.M.Sheriff and Company
rep. by N.Mohideen Sheriff
S/o.Navab Sheriff,
247, Cherry Road, Salem.

... Appellant/1st Plaintiff

vs

1.Salem City Municipal Corporation,
rep. by its Commissioner,
Salem.

2.N.Ravi

3.N.R.Rajagopalan

4.Shajehan

5. Tamil Nadu Electricity Board,
Rep.by Superintending Engineer,
Salem.

6. Junior Engineer (O&M),
TNEB, Salem.

7.Sarasu

8.Amutha

9.Minor Vasanthi

10.Minor Priya

11.Minor Chandrakala

12.Minor Karthik
(minords rep by Mother and Natural Guardian 7th Respondent
Sarasu)

13.Periyayee (died)

14.Tamilnadu Co-operative Milk Producers Union,
rep. by its Managing Director,
Madurai.

... Respondents/Defendants

(Respondents 2, 4 to 14 given up herein
as unnecessary parties)

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule (u) of the Code of Civil Procedure, 1908, against the Judgment and Decree dated 01.12.2005 made in A.S.No.49 of 2004 on the file of the District Court, Salem reversing the Judgment and Decree dated 14.10.2003 made in O.S.No.1017 of 1990 on the file of the I Additional District Munsif Court, Salem.

For Appellant : Ms.Zeenath Begum for
Mr.T.Muruga Manickam

For R1 : M/s.Bhuvaneswari
R3 Died
R2, 4 to 14 Given up

J U D G M E N T

The appellant is aggrieved by the impugned judgment and decree dated 01.12.2005 passed by the learned Principal District Judge, Salem in A.S.No.49 of 2004 reversing the judgment and decree dated 14.10.2003 passed by the learned I Additional District Munsif, Salem in O.S.No.1017 of 1990 and has remanded the case back to the I Additional District Musif, Salem for re-consideration.

2.The present Civil Miscellaneous Appeal has been filed during the year of 2006. It is seen from the records that notice has been served on the 1st and 3rd respondents. In the proceedings, the appellant has given up 2nd, 4th to 14th respondents. Meanwhile, the 3rd respondent also died and steps were taken vide M.P.Nos.2 & 3 of 2006. However, notice on the legal representatives of the 3rd respondent has not been served till date. Therefore, I do not find any reason to keep the present Civil Miscellaneous Appeal pending before this Court.

3.Heard the learned counsel for the appellant and the 1st respondent.

4.The appellant was the plaintiff in O.S.No.1017 of 1990. The said suit was filed for declaration against the 1st to 13th respondents based on the licence granted to the appellant by the

Salem Corporation the 1st respondent herein. By a judgment and decree dated 14.10.2003, the learned I Additional District Munsif had decreed the above suit.

5. Aggrieved by the same, the 3rd respondent/4th defendant had filed an appeal vide A.S.No.49 of 2004 before the Principal District Judge, Salem. In the said appeal, the 3rd respondent/4th defendant had filed an application for appointing an Advocate Commissioner to note down the physical features to demarcate the property of the Arulmighu Kottai Mariamman Temple belongs to the 1st respondent Salem Corporation in the suit 'A' Schedule Property with help of a qualified surveyor and the V.A.O of Salem Town and to file his report with the plan drawn to scale and to note down other things to be shown to him at the time of his visit.

6. The learned counsel for the appellant submits that the learned Principal District Judge, Salem erred in remanding the case back to the lower court. He submits that as an Appellate Court, the Principal District Court, Salem could have invoked power under Order 41 Rule 25 of CPC by framing appropriate issues and refer the same for trial to the Trial Court from whose decree the appeal was preferred, and directed the Trial Court to take the additional evidence and shall return the evidence to it together with its findings thereon and the reasons therefor [within such time as may be fixed by it or extended by it from time to time].

7. Though the arguments advanced by the learned counsel for the appellant, appears to be attractive, however, in absence of service of notice on the contesting respondents despite the present Civil Miscellaneous Appeal being filed as early as 28.04.2006, I am not inclined to interfere with the impugned order of the learned Principal District Judge, Salem.

8. The property admittedly is in possession of the appellant even though the suit schedule property belongs to the 1st respondent and resolution appears to have been passed by the 1st respondent Corporation to re-allot the property to the other respondents.

9. Be that as it may, no prejudice or harm will be caused to the other respondents if the order passed by the learned Principal District Judge is upheld. By filing the the present Civil Miscellaneous Appeal, the appellant has managed to drag on the proceedings to another 15 years after the impugned judgment came to be passed on 01.12.2005. The suit is of the year 1990 which was decreed as early as 14.10.2005.

10.I do not find any reasons to interfere with the impugned order dated 01.12.2005 passed by the Principal District Court. Since the suit is of the year 1990, the learned I Additional District Musif, Salem is requested to pass judgment and decree in O.S.No.1017 of 1990 in terms of the impugned judgment and decree in A.S.No.49 of 2004 passed by the Principal District Court, Salem within a period of twelve months from the date of receipt of a copy of this order.

11.The present Civil Miscellaneous Appeal stands dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1.The District Court, Salem.

2.Additional District Munsif Court, Salem

3.The Section Officer,
V.R.Section, Madras High Court.

+1 CC to Mr.V. Rajesh, advocate sr 95311

+2 Ccs to Mr.M.J. Vijayaraghavan, Advocate sr 95480.

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C.M.A.No.2810 of 2006
and M.P.Nos.1, 2 & 3 of 2006

SJ(CO)
SP(23/07/2020)

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