

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RECORDED ON :05.11.2019

ORDERS PRONOUNCED ON:07.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3318 of 2005

and

C.M.P.No.16893 of 2005

1.S.Dhanalakshmi

2.S.Veeramuthu

3.L.Veeramani

... Appellants 1 to 3/
Petitioners/Respondents

vs

1.Arulmighu Kapaleeswarar Thirukoil

Rep.by its Executive Officer,

Mylapore, Chennai - 600 004.

...1st Respondent/1st Respondent/Appellant

2.T.K.Narayanan

...2nd Respondent/2nd Respondents/
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (d) of CPC, to set aside the fair and decreetal order of the learned I Additional Judge, City Civil Court at Chennai, passed in C.M.P.No.746 of 2004 in A.S.No.223 of 2001 dated 16.09.2005.

For Appellants: Mr.K.Boopalan

for Mr..R.K.Bhavanatham

For R1

: M/s.Usha Tholgappiar

For R2

: Not ready in notice

J U D G M E N T

The operative portion of the present Civil Miscellaneous Appeal was dictated in the open Court as allowed on 25.10.2019 based on the submissions made. However, before the detailed order was to be dictated in chamber, the learned counsel for the 1st respondent mentioned and requested for the case to be listed "for being clarification". Accordingly, the case taken up for hearing on 05.11.2019 and the order dated 25.10.2019 was recalled. It was thereafter adjourned on 07.11.2019.

2.The present Civil Miscellaneous Appeal has been filed under Order 43 Rule 1(d) of C.P.C., against the fair and decreetal order dated 16.09.2005 passed by the learned I Additional Judge, City Civil Court at Chennai in C.M.P.No.746 of 2004 in A.S.No.223 of 2001.

3.The appellants are the legal heirs of the original Defendant No.1 (P.Somasundaram) in O.S.No.554 of 1988. The first respondent herein had filed a suit against the deceased P.Somasundaram and the second defendant herein, alleged sub-tenant, to whom the said P.Somasundaram had allegedly sublets the property. The suit was filed for ejecting the deceased P.Somasundaram from the suit schedule property. The suit was contested by the appellants herein. However, the suit was dismissed without costs.

4.Against the Judgment and decree, passed by the VIII Assistant Judge, City Civil Court, Chennai in O.S.No.554 of 1998 dated 21.11.2000, the respondents/plaintiffs preferred an appeal suit in A.S.No.223 of 2001 where the appellants herein remained absent. The appeal was therefore allowed in absence of the appellants herein on 28.06.2002 and thereby reversing the Judgement and decree passed by the VIII Assistant Judge, City Civil Court, Chennai with the observation that Section (9) of the Madras City Tenants Protection Act, 1921 will not apply to religious institutions or charitable institutions belonging to Hindu, Muslim and Christian and other religions.

5.Thereafter, the respondents had also initiated execution proceedings. At that stage, the appellants preferred C.M.P.No.746 of 2004 to set aside the exparte order passed on 28.06.2002 by the I Additional Judge, City Civil Court, Chennai in A.S.No.223 of 2001.

6.In the counter, the first respondent herein has stated that notice on the appellants was sent to No.4, R.K.puram, Fourth Street, Mylapore, Madras - 4 near Raja Kalyana Mandapam and the notices were returned with an endorsement 'refused'. Thereafter, paper publication was ordered pursuant to which the order dated 28.06.2002 came to be passed in A.S.No.223 of 2001.

7.The lower Court rejected the above Civil Miscellaneous Petition vide impugned order dated 16.09.2005 with the following observation:

"From the data materials available on hand, it is of transparency rather pungency that the notices of appeal sent to the residential addresses of the petitioners under R.P.A.D have been returned with the postal endorsement as "REFUSED". Added to this, pursuant to the

direction of this Court, paper publication through Dinakaran has also been taken by the First Respondents/Appellants side against the petitioners. As such, it cannot be presumed or assumed in the strict legal sense that without service of proper notice, the appeal has been dealt and disposed by this Court. From the said concrete and cemented scenario, this Forum is not in a position to hail and sail with the case and claim of the petitioners."

8. Assailing the order passed by the I Additional Judge, City Civil Court, Chennai, the present appeal has been filed stating that the notice in this appeal was wrongly sent to No.4, R.K.Puram, 4th Street, Mylapore, Madras - 4 near Raja Kalyana Mandapam even though according to the respondents/plaintiffs the address of the appellants is No.46, R.K.Puram, 5th Street, Mylapore, Madras - 4 and therefore the order passed by the Court was liable to be set aside and this appeal is to be allowed.

9. I have perused the materials available on record. No doubt there is a variance in the address given in the plaint and the address to which the respondents/plaintiffs was served. In the plaint, the address for service of summons on the Appellant was No.46, R.K.Puram, 5th Street, Mylapore, Madras - 600 004. In A.S.No.223 of 2001, the address to which notice was sent to No.4, R.K.Puram, 4th Street, Mylapore, Madras - 4 near Raja Kalyana Mandapam. In the present Civil Miscellaneous Appeal, the address of appellants is also given as No.4, R.K.Puram, 4th Street, Mylapore, Madras - 4. According to the appellants service of notice on the appellants at No.4, R.K.Puram, 4th Street, Mylapore, Madras - 4 was not in accordance with law.

10. Thus, submission of the learned counsel for the appellants defies logic as the admittedly notice was sent to the address of the appellants which was refused. Therefore, the 1st respondent applied for paper publication and effected substituted service of notice.

11. As the notice was served but refused and later substituted service of notice was effected the appellant cannot plead improper service of notice. I do not find any reason to interfere with the order.

12. Consequently, I uphold the order of the I Additional City Civil Court, Chennai passed in C.M.P.No.746 of 2004. The present Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional Judge, City Civil Court,
Chennai.
2. The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.JRK.Bhavanantham, Advocate Sr.89594

C.M.A.No.3318 of 2005
and
C.M.P.No.16893 of 2005

mr[co]
srg 18/12/2019