

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.842 of 2010

and

M.P.No.1 of 2010

1. J.Albert Samuel

2. Latha Selvakumar

... Appellants/Plaintiff

versus

1.D.Suresh Kumar

Represented by Power Agent.

2.The Arch-Diocese of Madras,
Mylapore Society,

Represented by Rev.Fr.Jeba Malai Dharmanathan,
Sahaya Madha Church,
No.50, Othavadai Street,
Nammalwarpett,
Chennai-600 012.

3. The Sub-Registrar,

Anna Nagar, Chennai-600 040.

... Respondents

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure to against the judgment and decree in A.S.No.147 of 2007 dated 15.12.2009 passed by the Additional District and Sessions Judge III Fast Track Court, Chennai confirming the Judgment and Decree of dismissal of suit in O.S.No.166 of 2005 dated 06.03.2006 passed by the VII Assistant Judge, City Civil Court, Chennai and praying for setting aside the same and decree the suit with costs as prayed for.

For Appellants : Mr.J.Kalidas

For Respondents 1 & 3 : No Appearance

For 2nd Respondent : M/s.Auxiliapeter

JUDGMENT

This appeal is not admitted. However, this Court requires to state the facts that now leads the Court to arrive at a conclusion.

2.1 The suit property is described as a non-residential building of 182 sq.ft. According to the plaintiffs/appellants, the property originally belonged to a certain Boopathy Naicker. One Luisal, stated to be the mother of the 2nd plaintiff / 2nd appellant, was a tenant under Boopathy Naicker, and the tenancy was stated to have commenced some time in 1972. After the demise Bhoopathi Naicker, the tenant had atoned the tenancy and was paying rent to the heirs of the deceased Boopathy Naicker.

2.2 Be that as it may, the 1st defendant herein, a third party had laid RCOP Nos.715 of 1999 and RCOP 990 of 1992 against the father of the 2nd appellant. One of the subject matter of one of these rent control proceedings was the suit property. That was resisted by the alleged tenant (second appellant's father) on the ground that there existed no landlord and tenant relationship between him and the 1st defendant. This was accepted by the Rent Controller and accordingly, the Rent Control Proceedings pertaining to the suit property came to be dismissed. As against the Order passed, the 1st defendant had preferred R.C.A.No.544 of 2003, but this came to be dismissed for default.

2.3 While things stood thus, on 02.01.2004, under Ext.A-1 sale deed, the heirs of Boopathy Naicker referred to above, had executed a sale deed concerning the suit property to the present appellants. The 1st defendant claimed title under a sale deed said to have been executed by to Bhoopathi Naicker and one Gnanambal, and on the strength of the said sale deed, he sold the suit property to the 2nd defendant. Before the registration of the second mentioned said sale deed, the appellants had filed the present suit is laid and one of the prayers in the suit was that the third defendant, the Sub-Registrar should not register the sale deed. (It is submitted since the dismissal of the suit, the sale deed executed by the first defendant in favour of the second defendant has been registered).

3. While things stood thus, the controversy arose where the plaintiffs claiming title through the heirs of Boopathy Naicker, and the first and (now the second defendant) claiming independent title over the same. based on the sale deed which the 1st defendant is stated to have taken from Boopathy Naicker and one Gnanammal to an extent of 2,384 sq.ft. The trial court had dismissed the suit and one of the grounds that constituted the reasoning for the trial court was that the plaintiffs ought to have laid a suit for declaration of title.

4. Challenging the decree, the plaintiffs had filed A.S.No.147 of 2007 on the file of III Fast Track Court as it existed then. Before the said Court, they filed an interlocutory application for amending the plaint which was received in S.R.No.842. This application is seemed to have been filed on 19.11.2009 and it was assigned S.R.No.842 of 2010. It was returned as not

maintainable and the docket entries does not even say that the appellants are heard in the matter before returning. The docket sheet in this interlocutory application shows that it was called in the Court on 19.11.2009 without being numbered, and the matter was adjourned to 24.11.2009 and successively after a few postings, it was posted to 15.12.2009. At no time in between, the First Appellate Court thought it fit to take this application on file but instead dismissed the appeal without even caring to number the Interlocutory Application filed by the appellants for amending their plaint.

5. Prima facie, this Court finds that the nature of dispute which this Court now witnesses would require a decision on the title since rival sides claim title through independent sources, from a certain Boopathy Naicker. It is in this context, the appellants have filed an application to amend the plaint. Courts do not exist to make a mockery on proceedings without even caring to solve an issue before it. To keep a petition unnumbered in its file for several months was plainly inappropriate. The docket also does not indicate that the said petition suffer from any defect, and it was seen returned by the Registry for curing any defect.

6. In the circumstance such as this, it is essential that the said interlocutory application is taken on file and appropriate orders are passed on merits. It is needless to mention that the First Appellate Court may have to revisit the judgment of the trial court based on its decision in a petition for amending the plaint.

7. In conclusion, this appeal is allowed and the judgment of the First Appellate Court is set aside, and the matter is remanded to the First Appellate Court and the First Appellate Court is directed to take the application in D.No.52/SA842/2010 filed on 19.11.2009, and dispose of the appeal in the manner already indicated. Since the III Fast Track Court is now abolished, the Principal Judge, City Civil Court, Chennai, shall take this case on its file. Since the original suit is of the year 2005, the First Appellate Court is required to dispose of the matter on or before 31.08.2019. Parties are directed to appear before the City Civil Court, Chennai on 6.3.2019. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

ssn

To

1.The Additional District and Sessions Judge,
III Fast Track Court,
City Civil Court, Chennai.

2. The VII Assistant Judge,
City Civil Court,
Chennai.

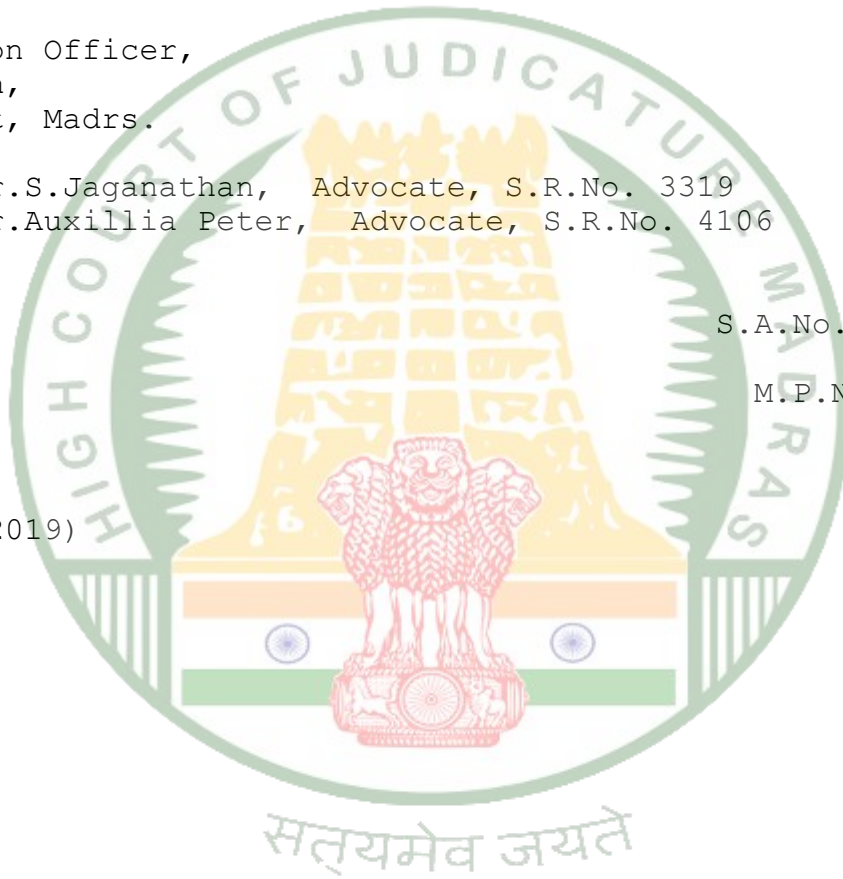
Copy TO

The Section Officer,
VR Section,
High Court, Madrs.

+lcc to Mr.S.Jaganathan, Advocate, S.R.No. 3319
+lcc to Mr.Auxillia Peter, Advocate, S.R.No. 4106

S.A.No.842 of 2010
and
M.P.No.1 of 2010

MP (CO)
GN(28/02/2019)



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