

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.09.2019

Pronounced on: 13.09.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.P.Nos.12618, 12619 of 2018 & 3189 of 2019
in S.A.No.626 of 2008

R.Sarala,
W/o.R.Ravichandran,
Q-Block No.17, Pallakumanagar,
Mylapore,
Chennai – 600 004.

... Petitioner/Third Party
in C.M.P.Nos.12618 & 12619 of 2018

E.Kala,
D/o.Ekambaram,
New No.10, Appavoo Gramani
First Street, Robertsonpet, Chennai – 600 0028
residing at No.20/29A, Shanmugapuram 1st Extension,
1st Street, Ambedkar Nagar,
Thiruvottiyur,
Chennai – 600 019.

... Petitioner/2nd Respondent
in C.M.P.No.3189 of 2019

/versus/

1. Arulmighu Tulukanathamman Koil,
Rep. by Managing Trustee,
Having Office at No.10, New No.10,
Appavoo Gramani First Street,
Robertsonpet, Mandaveli,
Chennai – 600 028.

... Respondent
in C.M.P.Nos.12618 & 12619 of 2018
in C.M.P.No.3189 of 2019

2. Mrs.Sarasu,
C/o.Ravi.

... Respondent
in C.M.P.Nos.12618 & 12619 of 2018
in C.M.P.No.3189 of 2019

3. Mrs.E.Kala,
D/o.Ekambaram.

... Respondent
in C.M.P.Nos.12618 & 12619 of 2018

4. Santhamma,
C/o.Kala.

... Respondent
in C.M.P.Nos.12618 & 12619 of 2018
in C.M.P.No.3189 of 2019

2 to 4 are residing at,
New No.10, Appavoo Gramani
First Street, Robertsonpet, Mandaveli,
Chennai – 600 028.

Prayer in C.M.P.No.12618 of 2018: Civil Miscellaneous Petition is filed under Order 1 Rule 10 of C.P.C., praying to implead the Petitioner/Third Party as a 4th Appellant in the above Second Appeal.

Prayer in C.M.P.No.12619 of 2018: Civil Miscellaneous Petition is filed under Order 41 Rule 19 of C.P.C., praying to set aside the exparte order dated 06.01.2017 passed in above S.A.No.626 of 2009, hear the Second Appeal a fresh hearing.

Prayed in C.M.P.No.3189 of 2019: Civil Miscellaneous Petition is filed under order 41 Rule 21 read with Order 42 Rule 1 of C.P.C., praying to pass an order to set-aside the exparte decree passed on 06.01.2017 allowing the second appeal No.626 of 2008 and pass orders.

C.M.P.Nos.12618 & 12619 of 2018

For Petitioner : Mr.K.Shanmugakani

C.M.P.No.3189 of 2019

For Petitioner : Mr.V.Subramani

C.M.P.Nos.12618 & 12619 of 2018 & C.M.P.No.3189 of 2019

For R1 : Mr.T.Dhansekaran

C.M.P.Nos.12618 of 2018

For R3 : Mr.V.Subramani

C.M.P.Nos.12618 & 12619 of 2018

For R2 & R4 : No such person

C.M.P.No.3189 of 2019

For R2 & R3 : No such person

COMMON ORDER

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

- 2.** This Court, on 06.01.2017, allowed the Second Appeal in S.A.No.626 of 2008 (arising from A.S.No.157 of 2007 against O.S.5463 of 2002) filed by Arulmighu Tulukanathamman Koil, Represented by its Managing Trustee reversing the concurrent judgments of the Courts

below. Based on the decree, the appellant/plaintiff has filed Execution Petition E.P.No.562 of 2018, on the file of X Assistant Judge, City Civil Court, Chennai. While so, third party application in C.M.P.No.12618 of 2019 is filed by R.Sarala claiming that, after the dismissal of the Second Appeal for default on 21.09.2011, the Second defendant in the suit E.Kala on 05.03.2012 entered into agreement with her to sell the property for a sale consideration of Rs.28,00,000/- and received total sum of Rs 25,00,000/- on different dates towards the sale consideration. Thereafter, she failed to execute the sale deed in spite of ready and willingness of the petitioner. Hence, she filed suit for specific performance before the High Court in C.S.508/2012. The suit was Allowed and the sale deed was executed by the High Court on 26.06.2013 on behalf of E.Kala, after deposit of balance sale consideration in the Court since, (said Kala) did not come forward to execute the sale deed.

3. The petitioner now come to know, the Second Appeal No.626 of 2008 is dismissed for default has been restored and also allowed on 06.01.2017. The appellant/plaintiff know fully well that the property was duly purchased by her from E.Kala and the Revenue records stands in her name. When the Temple Trustees tried to demolish her property, she gave police complaint on 21.10.2015 and pursuant to the

direction of this Court in Crl.O.P.Nos.27037 of 2015 and 27038 of 2015, F.I.R has been registered against the persons claiming themselves as Managing Trustees of the Arulmighu Tulukanathamman Temple. Therefore, the Appellant ought to have impleaded the petitioner in the Second Appeal. The petitioner who is the subsequent purchaser of the property, after dismissal of the Second Appeal from the contesting defendant is a necessary party. The appellant has filed the restoration petition and got the Second Appeal restored without due notice, even to the contesting parties. Hence, pray to implead her as respondent and to set aside the decree passed in the Second Appeal No.626 of 2008, dated 06.01.2017.

4. C.M.P.No.3189 of 2019 is filed by E.Kala (2nd defendant in O.S.No.5463 of 2002) alleging that the Suit in O.S.No.5463 of 2002 filed by the Temple was dismissed by the Trial Court on 24.08.2006 and confirmed by the First Appellate Court in A.S.No.157 of 2006 on 13.12.2007. The Temple preferred Second Appeal before the High Court but did not pursue the appeal properly. Due notice was not given to her in the Second Appeal. For non-representation, the second appeal was dismissed for default on 21.09.2011. After dismissal of the Second Appeal, she sold the property to Sarala (petitioner in C.M.P.Nos.12618

and 12619 of 2018) and vacated the premises on 26.06.2013. Neither before the dismissal of the Second Appeal for default nor in the Condone delay application for restoration nor after its restoration, due notice served on her. She came to know about the Second Appeal and the decree dated 06.01.2017 passed in the Second Appeal only when Sarala informed her on 03.01.2019. Hence, the judgment of this Court dated 06.01.2017 passed without due notice to her, has to be set aside.

5. This Court, while considering the second appeal, before admitting the appeal, has ordered notice to the respondents. Records revealed that 1st respondent Tmt.Sarasu has entered appears through counsel M/s.Anna Shoba Premika and the notice to other two respondents (E.Kala & Santhanamma) returned unserved with endorsement "left". Substitute service through paper publication ordered and same was effected on 07.10.2016 in Tamil daily "Makkal Kural" informing the respondents that the Second Appeal will be heard on 24.10.2016. Having satisfied that the respondents could not be served in the ordinary way, this Court has ordered substitute service as contemplated under Order V Rule 20 of C.P.C and after ensuring the due compliance of substitute service. Recording the same, this Court has proceeded to frame substantial question of law and decided the Second

Appeal.

6. Now it is brought to the Knowledge of this Court, in C.M.P.Nos.12618 & 12619 of 2019 and in C.M.P.No.3189 of 2019 that, Mrs.E.Kala, after dismissal of the second appeal for default on 21.09.2011 has entered into an agreement with Sarala on 05.03.2012 to sell the property, but did not execute the sale deed. Made Sarala to file suit for specific performance and allowed it to be decided exparte. Thus, Sarala got an exparte decree in C.S.No.508 of 2012 on 06.02.2013. After execution of the sale deed on 26.06.2013 by the Court, pursuant to the Court decree, E.Kala has set up her brothers and sisters to file partition suit in O.S.No.4003 of 2014 in respect of the subject property. Same came to be rejected on 07.04.2015 at the behest of the R.Sarala. This Court, record discloses that One Valliammal has filed a third party petition through her counsel in S.A.No.626 of 2008 but same was returned by the Court since at that point of time, the Second Appeal was not in live register due to dismissed for default.

7. Later, when the Temple tried to assert their right over the property, Mr.Ravichandran husband of R.Sarala has lodged a Criminal complaint against the Trustees of the temple and the F.I.R happened to

be registered on 27.01.2016. The application to condone delay of 1276 days and to set aside the order of dismissal is dated 28.04.2015. The condone delay petition was allowed on 17.06.2016 and the petition to set aside the dismissal order was allowed and the Second Appeal was restored on 27.06.2016. In the interregnum period several incidents has happened.

8. In view of the above facts, to give opportunity of hearing to the parties interested and in the interest of justice, the judgment and decree dated 06.01.2017, passed in S.A.No.626 of 2008 is set aside. S.A.No.626 of 2008 is restored on file. Mrs.R.Sarala is permitted to implead as a 4th respondent in the Second Appeal. Registry is directed to carry out the necessary amendment and list the Second Appeal for final disposed before the bench concern, dealing Second Appeal final hearing case of the year 2008.

9. In the result, the **Civil Miscellaneous Petitions are Allowed.** No costs.

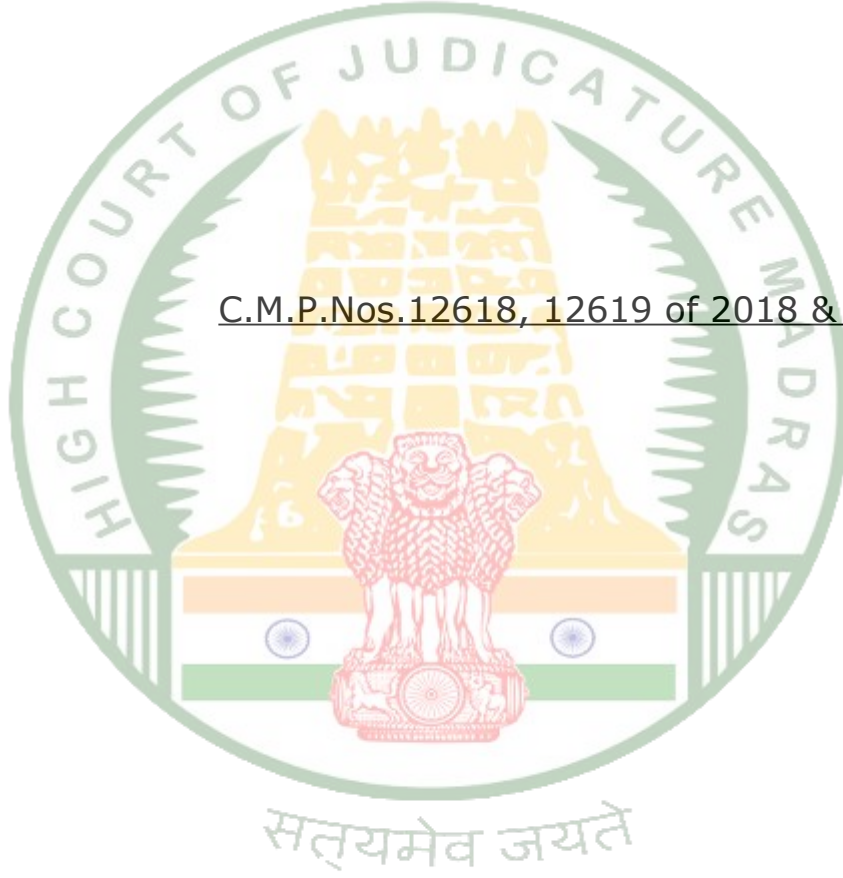
13.09.2019

Index :Yes/No
Internet :Yes/No
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C.M.P.Nos.12618 of 2018 etc.,

Dr.G.Jayachandran,J.

bsm



C.M.P.Nos.12618, 12619 of 2018 & 3189 of 2019

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