

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.NO.130 OF 2001

AND

C.M.P.NO.11536 OF 2003

- 1.A.L.Thiruvengadam (Died)
- 2.Mahalakshmi
- 3.Lokeshwari
- 4.Guru Rakesh
- 5.Guru Vignesh

All are residing at:
179J, "Mahalakshmi Nilayam"
Ettins Road, Udhagamandalam Post
The Nilgiris District.

[Appellants 2 to 5 are brought on record as
Lrs of the deceased sole appellant vide order
of Court dated 11.12.2019 made in
C.M.P.Nos.14713 to 14715/2018 in
A.S.No.130 of 2001]

.. Appellants/Plaintiffs

vs.

- 1.K.Venkataraj
- 2.R.Janaki
- 3.V.Padmavathi
- 4.R.Ruckmani
- 5.P.Rajeswari
- 6.B.Lakshmi
- 7.J.Shanthi
- 8.R.Senthil Kumar
- 9.R.Gunasekaran
- 10.V.Sudhir
- 11.P.K.Ramaswami
- 12.K.Duraisamy
- 13.Krishnan
- 14.Das
- 15.Shakunthala
- 16.Basheer Ahmed
- 17.Kaleel Rahiman

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- 18.Srinivas
- 19.Abdul Jaffar
- 20.Abdul Razack
- 21.K.S.Achutha Rao
- 22.E.Robin
- 23.Deepthy Vanamali
- 24.D.Selvarajan
- 25.B.Suresh
- 26.The Proprietor,
Electrolytic Enterprises Building,
830, Sri Uma Maheswari Building,
K.K.Lane(Near Fly Over)
Avanashi Road, Coimbatore - 641 018.
- 27.The Proprietor,
International Instruments Industries,
Sri Uma Maheswari Building,
157, Near Fly Over Brindge,
Avanashi Road,
Coimbatore - 641 018.
- 28.The Manager, S.Srinivasan,
and Company Secretary,
3rd Floor, Sri Uma Maheswari
Building, Near Fly Over Bridge,
157, Avanashi Road,
Coimbatore - 641 018.
- 29.The Proprietor, Deepak Stockist,
Vel Winding Wires,
Sri Uma Maheswari
Building, 157, Avanashi Road,
Near Fly Over,
Coimbatore - 641 018.
- 30.The Proprietor,
Lakshmi Instruments
Sales & Service, 2nd Floor,
Sri Uma Maheswari
Building, 157, Avanashi Road,
Near Fly Over Bridge,
Coimbatore - 641 018.
- 31.The Proprietor, Agro Engineering
Agency, 828, K.K.Lane,
Sri Uma Maheswari
Building, Near Fly Over Bridge,
Avanashi Road,
Coimbatore - 641 018.

32.The Proprietor,
Sri Sivasakthi Films,
54, A.T.C.Buildings, Gopalapuram,
3rd Street, Coimbatore - 641 018

33.The Proprietor, Suriya Films
5.B, A.T.C.Buildings,
Gopalapuram, 3rd Street,
Coimbatore - 641 018

34.R.Vijayakumar Pandian, Advocate,
5-C, A.T.C.Buildings,
Gopalapuram, 3rd Street,
Coimbatore - 641 018.

35.U.Chandrasekaran, Advocate,
5-C, A.T.C.Buildings,
Gopalapuram, 3rd Street,
Coimbatore - 641 018.

36.J.Amalanathan, Advocate,
50-C, A.T.C.Buildings,
Gopalapuram, Coimbatore - 641 018

37.The Proprietor, G.R.R.Movies
5-D, "A.T.C.Buidings"
Gopalapuram, 3rd Street,
Coimbatore - 641 018.

38.The Proprietor,
Thangam Films,
5-G, Sri Valli Movies,
Gopalapuram, 3rd Street,
Coimbatore - 641 018.

39.Tmt.Veena,
Employee at Telephone Exchange,
A.T.C.Buildings, 3rd Street,
Gopalapuram,
Coimbatore - 641 018.

40.Gopinath,
Executive Officer
at Co-operative Bank,
Coimbatore, A.T.C.Buildings,
3rd Street, Gopalapuram,
Coimbatore - 641 018

41.The Proprietor,
Vara Sithi Vinayakar Finance
A.T.C.Buildings, 3rd Street, Gopalapuram,
Coimbatore - 641 018.

.. Respondents/Defendants

Prayer:-

Appeal filed under Section 96 of the Civil Procedure Code, against the Judgment and Decree of the II Additional Subordinate Judge at Coimbatore dated 18.04.2001 in O.S.No.128 of 1998.

For Appellants : M/s.Mythili Suresh
For M/s.Sarvabhauman Associates

For Respondent : Mr.V.Radhakrishnan, Senior counsel
For Mr.S.Kadarkarai
[For R1]

M/s.Hema Sampath, Senior counsel
For Mr.S.Gunalan
[For R2 & R11]

Mr.K.Palaniswami
[For R4 & R7]

Mr.S.K.Rakhunathan
[For R21]

JUDGMENT

The wife of the appellant filed her own affidavit, stating that her husband/1st appellant, filed the appeal suit in A.S.No.130 of 2001 against the judgment and decree dated 18.04.2001 made in O.S.No.128 of 1995 on the file of the 2nd Additional Subordinate Judge's Court at Coimbatore.

2. During the pendency of the first appeal, her husband, who is the first appellant, Mr.Thiruvengadam died on 06.04.2008, leaving behind the appellants surviving legal heirs and thereafter, the appellants are pursuing the appeal. On the advice of the learned counsel and the elders of the family, the appellants have decided to settle the matter amicably with the respondents. Thus, the appellants have stated that they are withdrawing the appeal suit in A.S.No.130 of 2001 and ready and willing to handover the possession of the suit property, which is the subject matter in O.S.No.25 of 2005 pending on the file of the Subordinate Court, Nilgiris, Ootacamund, filed by Mr.R.Senthil Kumar and Mr.R.Gunasekaran. The said Mr.R.Senthil Kumar and Mr.R.Gunasekaran, the respondents 8 and 9 in the present appeal suit also had agreed to withdraw the Execution

Petition 1, Execution Petition Register No.58 of 2006 in O.S.No.25 of 2005 now pending before the Sub-Court, Nilgiris, Ootacamund.

3. In view of the said compromise proposal, the appellants have filed the affidavit. The respondents in the present appeal suit also filed an affidavit and Mr.P.K.Ramaswami, who is the 11th respondent in the appeal suit and the husband of the 2nd respondent filed affidavit on behalf of the respondents. He has stated as follows:

"2. The 2nd appellant has filed an affidavit of undertaking that she is withdrawing the above appeal and that she will hand over vacant possession of the property and other appellants have also signed their affidavits of undertaking viz. The ground floor of the residential building bearing Door No.188 situate at Mahalakshmi Nilayam in R.S.No.1675. The ground floor is made up of three rooms with bathroom and latrine attached thereto. The plinth area being 750 sq.ft. or thereabouts-subject matter of Execution Petition 1, Execution Petition Register No.58 of 2006 in O.S.No.25 of 2005 before the Sub Court, Nilgiris, Ootacamund.

3. As and when the appellants hand over vacant possession of the above property us, in the very next hearing in the E.P.Court, we undertake to withdraw the E.P. on recording full satisfaction."

4. The respondents also agreed that when the appellants handover the vacant possession of the suit property, the Execution Petition now pending before the Sub-Court, Nilgiris, Ootacamund, will be withdrawn.

5. Considering the respective affidavits filed by the parties to the appeal suit in A.S.No.130 of 2001, this Court is inclined to pass the following orders:

(1) The appellants are directed to vacate the suit property and keep the vacant possession ready with them and on the next hearing date of the Execution proceedings in O.S.No.25 of 2005, the appellants are also attend the Court proceedings and handover the possession in the presence of the learned Sub-Judge, Nilgiris, Ootacamund and simultaneously, the respondents on the very same day, is directed to withdraw the Execution proceedings in the Execution Petition 1, Execution Petition Register No.58 of 2006 in O.S.No.25 of 2005 before the Sub Court, Nilgiris, Ootacamund.

(2) The appellants as well as the respondents in the appeal suit are directed to act simultaneously on the date of the Execution proceedings in O.S.No.25 of 2005 in the presence of the learned Sub-ordinate Judge, Nilgiris, Ootacamund.

6. With the above directions, the appeal suit in A.S.No.130 of 2001 stands disposed of as withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

7. After completion of the said exercise, the report is directed to be filed by the respective parties before this Court.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Subordinate Judge, Coimbatore.
2. The Sub Judge, Nilgiris, Ootacamund.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Gunalan, Advocate, S.R.No.10163
+1cc to Mr.S.Kadarkarai, Advocate, S.R.No.9839
+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.9694

A.S.No.130 of 2001

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