

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.696 of 2018 and
CMP No. 20677 of 2018

Sivaprakasam Appellant

Vs.

1. Venkatesan
2. Murali Respondents

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree passed in A.S.No.3 of 2016, dated 29.11.2017 on the file of the Subordinate Judge, Ranipet, confirming the Judgment and decree passed in O.S.No.27 of 2014 dated 17.08.2015 on the file of the District Munsif cum Judicial Magistrate No.I, Walajapet.

For Appellant : Mr.B.Vijay

For Respondents : Mr.K.V.Ananthakrushnan

J U D G M E N T

The 1st defendant in O.S.No.27 of 2014 has come with this second appeal challenging a decree for permanent injunction granted in O.S.No.27 of 2014 and confirmed in A.S.No.3 of 2016.

2. The plaintiff sought for a decree for injunction restraining the defendants from interfering with his possession and enjoyment of 2nd item of the suit property claiming that the property originally belonged to his grand father Kannappa Mudaliar who died leaving behind his three sons namely Sivaprakasam, Subramani and Balaraman. The plaintiff is the son of the 3rd son Balaraman. According to the plaintiff, at the oral partition that took place between the 3 sons of Kannappa Mudaliar, the suit properties were allotted to Balaraman and subsequently a registered partition was entered into between him and his mother on 16.09.2011 in which the suit properties were allotted to him. The defendants who have no right over the suit properties are attempting to prevent the plaintiff from using the 2nd item of the suit property to reach the suit 1st item.

3. The suit was resisted by the defendants contending that the plaintiff is not the owner of the property. The property is classified as Held-Over land by the Government in which the Government holds the paramount title. They would also contend that the plaintiff is not in possession of the suit properties.

4. The trial Court upon consideration of the evidence concluded that the plaintiff has established his possession of the suit properties by unimpeachable evidence. The claim of the defendants that the plaintiff ought to have sought for declaration of title was rejected because the Courts below found that there was no dispute regarding the title of the paramount owner namely the Government. The parties are litigating only on the question of possession. Therefore, the Courts below decreed the suit as prayed for. Aggrieved, the 1st defendant is on appeal.

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5. I have heard Mr.B.Vijay, learned counsel appearing for the appellant and Mr.K.V.Ananthakrushnan, learned counsel for the

respondents.

6. The following question of law was framed at the time of admission:

“Whether the Courts below were right in granting a decree in respect of both the items of the suit property when the plaintiffs' prayer is restricted to Item 2?”

7. It is seen from the plaint that the prayer is restricted only to item 2 of the suit property. However, both the Courts below have overlooked the corrections made in the plaint and had granted a decree in respect of the entire suit properties. This error if left uncorrected would lead to further litigation and it is a fundamental principle of law that the Court cannot grant a decree beyond the prayer in the suit.

8. Hence, the question of law is answered in favour of the appellant. The appeal is partly allowed. The decree is modified restricting it to item 2 of the suit properties alone. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2020

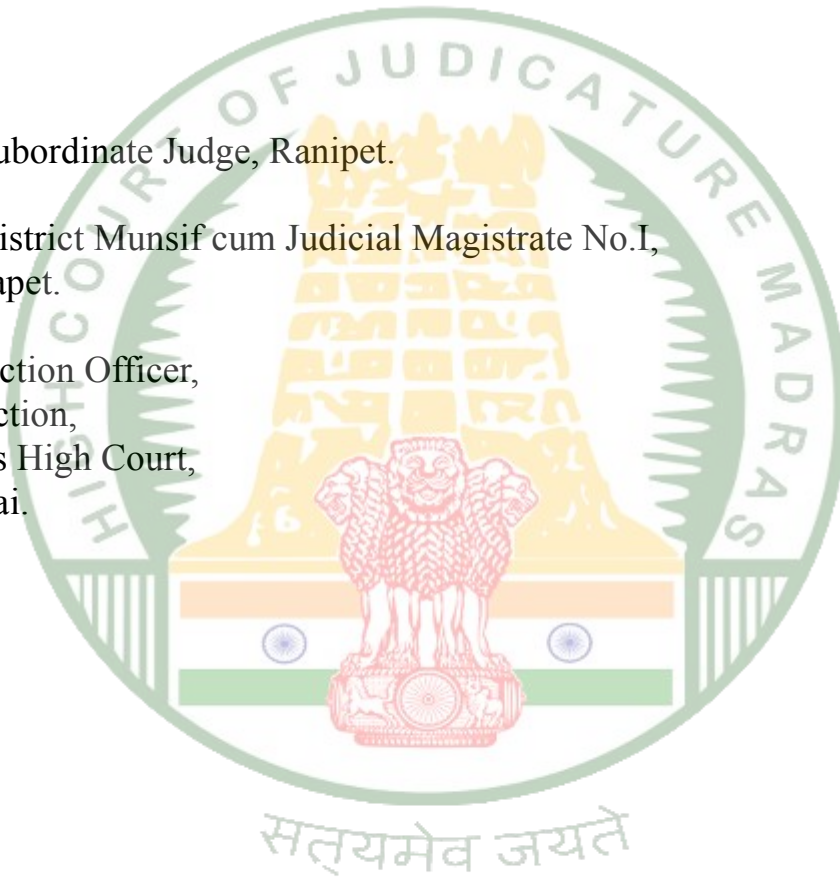
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Index: Yes/No

Speaking order/Non speaking order

To

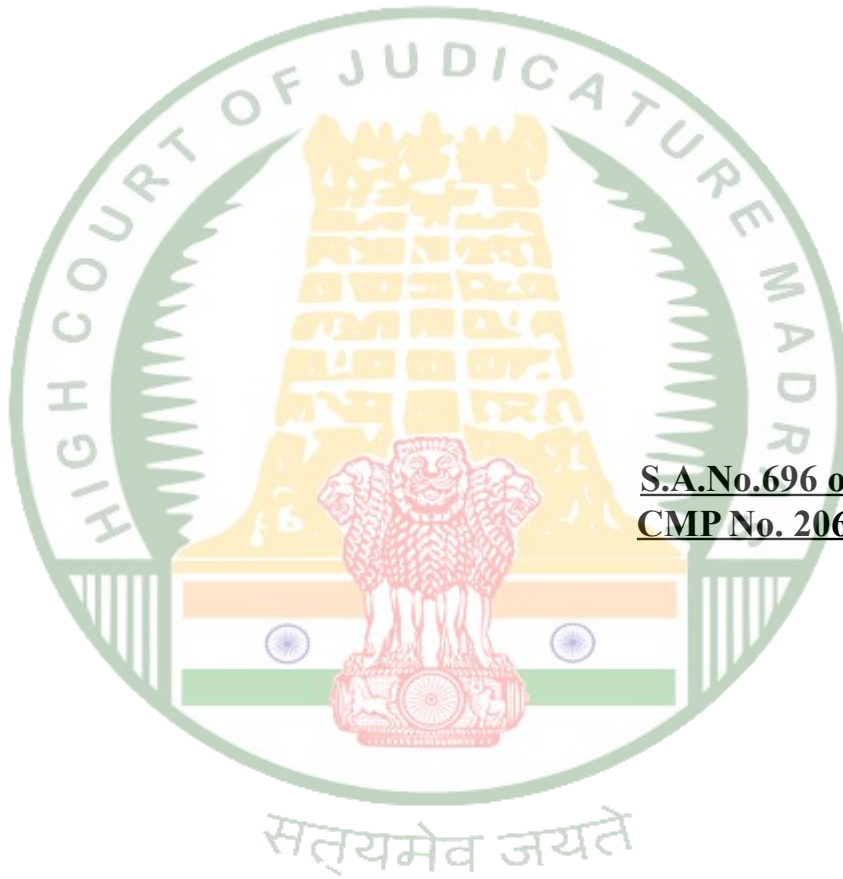
1. The Subordinate Judge, Ranipet.
2. The District Munsif cum Judicial Magistrate No.I,
Walajapet.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.



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R.SUBRAMANIAN, J.

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