

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Thursday, the Fifteenth day of April Two Thousand Twenty One

PRESENT

THE HON`BLE MR JUSTICE M.SUNDAR

CMP No.6519 of 2021

in SA.339/2021

TMT. R.MYTILI

[PETITIONER]

Vs

1 M.MOHANASUNDARI

[RESPONDENTS]

2 THE TAHSILDAR,
GUINDY-MYLAPORE TALUK
MYLAPORE, CHENNAI 600 028.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant stay all the further proceedings of Judgment and Decree in AS.NO.245 of 2018 dated 28.8.2019 on the file of the XVI Additional City Civil Court, Chennai reversing the Judgment and Decree in OS.NO.6469 of 2010 of the file of XII Assistant City Civil Court Chennai till the (CMP.6519/2021) pending disposal of the SA.339/2021

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.G.KRISHNAMURTHY, Advocate for the petitioner and of MR.A.S.BAALAJI, Advocate for the 1st Respondent (Caveator) the court made the following order:-

Dr.G.Krishnamurthy, learned counsel on record for petitioner/appellant is before this Virtual Court.

2. Read this in conjunction with and in continuation of separate proceedings made in main Second Appeal today which reads as follows:

'Dr.G.Krishnamurthy, learned counsel on record for sole appellant is before this Virtual Court.

2. This litigation commenced on 09.07.2010 when the appellant before this Court presented a plaint in 'XII Assistant Judge's Court, City Civil Court, Chennai' [hereinafter 'trial Court' for the sake of convenience and clarity]. This plaint was taken on

file by trial Court as O.S.No.6469 of 2010. The plaint inter-alia had three limbs of prayer, first pertains to injunction qua possession, second pertains to injunction qua putting up a construction and third pertains to mandatory injunction qua second respondent (Official defendant No.2) from cancelling patta in plaintiff's name. After full contest i.e., oral and documentary evidence the suit was partly decreed on 24.04.2017. This Court says partly decreed, because the prayer in plaint was for property admeasuring an extent of 820 sq.ft situate at Door No.4, Padavatammal Koil Street, Chinthadripet, Chinthadripet Village, Mylapore, Thiruvallikeni Taluk (as per the Corporation Tax receipt the Door No.12) comprised in R.S.No.156/2, C.C.No.1554, O.S.No.1842, within the Sub-Registration District of Periyamedu and the Registration District of Central Chennai, but the trial Court decreed the suit only to an extent of 722 sq.ft. Plaintiff accepted this decree and gave quietus, but first defendant carried the matter on appeal to 'XVI Additional City Civil Court, Chennai' [hereinafter 'First Appellate Court' for the sake of convenience and clarity] in and by way of a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' ['CPC' for brevity] and this appeal was taken on file as A.S.No.245 of 2018.

3. First Appellate Court, after full contest, reversed the aforementioned decree of trial Court by allowing the appeal vide judgment and decree dated 28.08.2019. A perusal of judgement of First Appellate Court judgment reveals that it has returned the same finding as that of trial Court i.e., that the plaintiff is entitled to only 722 sq.ft. A further perusal reveals that the same is an independent finding returned by First Appellate Court being a Court of fact.

4. First Appellate Court having returned the same finding as that of trial Court and having returned independent finding that plaintiff is entitled to 722 sq.ft, has come to a conclusion which is contrary to that of trial Court. Aggrieved against the appeal being allowed by First Appellate Court, captioned Second Appeal has been preferred by plaintiff in trial Court.

5. A perusal of memorandum of grounds of appeal reveals that five questions have been set out in Page No.5 of memorandum of grounds of appeal and the same have been styled as 'Substantial Questions of Law'. However, this Court deems it appropriate to formulate a substantial question of law [SQL] in the following manner.

'Can First Appellate Court exercising powers under Section 96 of CPC being a Court

of fact after returning an independent factual finding which is the same as that of trial Court reverse the judgement and decree of trial Court without any other reason?'

6. Captioned Second Appeal admitted on the above SQL.

7. Mr.A.S.Baalaji, learned counsel who is on caveat and who has joined this Virtual hearing accepts notice on behalf of first respondent in captioned Second Appeal. Counsel for appellant is permitted to serve on second respondent and he is also permitted to serve on standing counsel for second respondent. Notice to second respondent returnable in a week i.e., by 22.04.2021.

8. List captioned Second Appeal on 22.04.2021.'

3. From proceedings, it is clear that First Appellate Court has allowed the appeal and dismissed the suit of appellant in trial Court. Therefore, prayer for stay of decree would not arise. Faced with this situation, learned counsel for petitioner/appellant very fairly submits that this CMP can be closed, but requested that rights of petitioner to file an appropriate CMP if need arises may be preserved.

4. In the light of the aforesaid submission made by learned counsel for petitioner this request is acceded to. CMP disposed of as closed preserving rights of petitioner/appellant in the aforesaid manner.

-sd/-

15/04/2021

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE REGISTRAR,
CITY CIVIL COURT, CHENNAI.

WEB COPY

Order
in
CMP.6519/2021
IN SA.NO.339/2021
Date :15/04/2021

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RRI 17/04/2021