



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Friday, the Third day of December Two Thousand Twenty One

PRESENT

THE HON'BLE MS.JUSTICE V.M.VELUMANI

CMP.Nos.18002, 17963 and 18056 of 2021

in CMSA.Nos.7, 8 and 9 of 2016

P.ARUMUGAM

[PETITIONER IN ALL THE PETITIONS]

Vs

K.NANDHEESWARAN

[RESPONDENT IN CMP.NO.18002/2021]

S.SUBRAMANI

[RESPONDENT IN CMP.NO.17963/2021]

K.MAHALINGAM

[RESPONDENT IN CMP.NO.18056/2021]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased To permit the petitioner to raise the following by way of additional ground in the above Civil Miscellaneous Second Appeal viz, "The Courts below ought to have seen, that in execution of a decree for delivery of possession, the provisions of Or.21 R 58 CPC cannot be made applicable" (in CMP.No.18002 of 2021) pending disposal of the above CMSA.No.7 of 2016 and;

ii) To permit the petitioner to raise the following by way of additional ground in the above civil Miscellaneous Second Appeal viz., "The Courts below ought to have seen, that in execution of a decree for delivery of possession, the provisions of Or.21 R 58 CPC cannot be made applicable" (in CMP.No.17963 of 2021) pending disposal of the above CMSA.No.8 of 2016 and;

iii) To permit the petitioner to raise the following by way of additional ground in the above Civil Miscellaneous Second Appeal viz, "The Courts below ought to have seen, that in execution of a decree for delivery of possession, the provisions of Or.21 R 58 CPC cannot be made applicable" (in CMP.No.18056 of 2021) pending disposal of the above CMSA.No.9 of 2016.



Order : These petitions coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.T.MURUGAMANICKAM, SENIOR COUNSEL for M/S.ZEENATH BEGUM, Advocate for the petitioner in all the petitions and of MR.S.B.VISWANATHAN, Advocate for the Respondent in all the petitions, the court made the following order:-

The petitioner has filed present C.M.S.A's raising various grounds in Memorandum of Appeals. In the said appeals, the petitioner has filed the present Civil Miscellaneous Petitions to permit the petitioner to raise the additional ground in the above C.M.S.As viz that the Courts below ought to have seen that in execution of a decree for delivery of possession, the provisions of Order XXI Rule 58 of Civil Procedure Code cannot be made applicable.

2.As per Order XLI Rule 1(2) of C.P.C., memorandum of appeal shall contain the grounds of objection to the decree appealed has to be mentioned by the appellant. As per Order XLI Rule (2) of C.P.C., the appellant can raise additional grounds with leave of the Court. In the present case, the petitioner is seeking to raise additional ground against the decree appealed on the ground that Order XXI Rule 58 of C.P.C., cannot be made applicable in execution of decree for delivery of possession. The Court has power under Order XLI Rule 2 of C.P.C., to consider the grounds raised in Memorandum of Appeal and power of the Court is not restricted to consider only the grounds raised in the Memorandum of Appeal. After due notice to other party, the Court can consider other grounds also urged by the appellant not raised in the Memorandum of Appeal. Considering the scope of Order XLI Rule 2 of C.P.C., the petitioner is permitted to raise additional ground as mentioned in the C.M.Ps.

3.For the above reasons, all the above Civil Miscellaneous Petitions are ordered. Post the C.M.S.As on 10.12.2021.

-sd/-

03/12/2021

/ TRUE COPY /

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



TO

1 THE II ADDITIONAL DISTRICT JUDGE,
SALEM.

2 THE ADDITIONAL SUBORDINATE JUDGE,
SALEM.

WEB COPY

Order

in

CMP.Nos.18002, 17963 and 18056 of 2021

in CMSA.Nos.7, 8 and 9 of 2016

Date :03/12/2021

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PA (27/12/2021)