



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 16.12.2021

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THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

S.A. (MD) No.565 of 2009
and
M.P (MD) No.1 of 2009

K. Kandasamy Asari

...Appellant/Respondent/
Defendant

vs.

K. Parameswaran Thambi (Died)

1. K.P. Narayana Kumar
2. K.P.Manikumar
3. K.P.Srinivasakumar
4. K.P.Amithkumar
5. K.P.Jothikumar
6. K.P.Usha

(Cause title accepted by order of the Court
dated 29.09.2008 made in MP(MD) No.1 of 2018
in SA.Sr.No.41867 of 2008) ... Respondents

Second Appeal filed under Section 100 of CPC to set aside the decree and judgment made in A.S.No.60 of 1999 on the file of the Sub Judge, Kulithurai dated 20.02.2007 in reversing the decree and judgment in O.S. No.46 of 1986 on the file of the I Additional District Munsif,Kulithurai dated 11.09.1999.

For Appellant : Mr.R.Sundar

For Respondents : Mr.V.Balaji

JUDGMENT

This second appeal has been filed to set aside the decree and judgment made in A.S.No.60 of 1999 on the file of the Sub Judge, Kulithurai dated 20.02.2007 in reversing the decree and judgment in O.S. No.46 of 1986 on the file of the I Additional District Munsif,Kulithurai dated 11.09.1999.



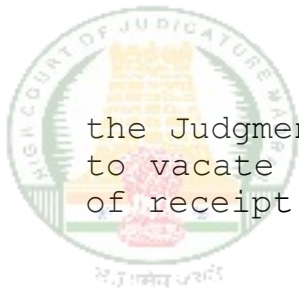
2. When the matter is taken up for hearing, the learned counsel appearing for the appellant / defendant would submit that the first appellate Court is not right in allowing the Appeal Suit filed by the plaintiff, as the first appellate Court having accepted the case of the defendant that the plaintiff never let out the premises in question to the post office, at the same time the first appellate Court held that the plaintiff is entitled to get the declaratory relief and the same is unsustainable in the eye of law. The plaintiff is entitled to get the property in question based on Ex.A7 is erroneous. Vendor of the defendant was not added as a party to the earlier suit and the judgement is not binding upon the defendant. The plaintiff is entitled to door No.21/112 at Kiliyur Panchayat and not to door No.4/78 at Pallur Panchayat. The plaintiff has not given the exact and correct particulars of property. There is a confusion in the description of the door number in the evidence. Before the trial court, the suit was dismissed. The possession and enjoyment of the defendant was upheld by the appellate Court. The appellate court has considered the evidence of all the parties. Based on the documents and the evidence deposed by the witnesses, the appellate Court had come to the conclusion that the plaintiff was entitled to get the right from the defendant from 01.08.1984 onwards and recovery of possession and declaration was also ordered and further ordered the defendant to pay a sum of Rs.50/- and to hand over possession to the plaintiff within a period of two months and the said judgment was passed on 20.02.2007.

3. The appeal was filed in the year 2009 and the same has been prolonged without being considered for a long time. In the meanwhile, it was submitted that in the year 2018 itself that the sole appellant died and the appellant has not taken any steps to implead the legal heirs even before this matter was listed before this Court on 16.11.2021. 08.12.2021 and 15.12.2021.

4. On 15.12.2021, this Court has directed the learned counsel for the appellant to file a memo 'for reporting instructions' or 'no instructions'. Even today when the matter is taken up for hearing, the counsel for the appellant is not ready to file a memo and simply seeks adjournment. The counsel for the respondent submitted that he has already informed that the appellant died in the year 2018 itself and till date, they have not taken any steps to implead the legal heirs within the limitation period and even today, he is not in a position to say what are the steps taken by him to implead the legal heirs of the deceased appellant.

5. This Court is of the view since the sole appellant died and in the absence of any application being filed to implead the legal heirs, this Court is inclined to dismiss the second appeal in limini.

6. In the result, the second appeal stands dismissed. No costs. Consequently connected miscellaneous petition is also closed. As per



the Judgment of the first appellate court, the defendant is directed to vacate the premises within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Sub Judge, Kulithurai.
2. The I Additional District Munsif, Kulithurai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/S.V.BALAJI, Advocate SR-39145, dated 16/12/2021

S.A. (MD) No.565 of 2009
and

M.P (MD) No.1 of 2009
16.12.2021

RK (04/01/2022) 3P/6C