



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the First day of November Two Thousand and Twenty One
PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

C.M.P. (MD)No.9093 OF 2021
IN
A.S. (MD)No.192 of 2021

1 K.PANDARAM
2 P.ANNAMALAI AMMAL ... PETITIONERS/1st & 2nd RESPONDENTS

Vs

1 P.R. SUBRAMANIYA RAJA ... RESPONDENT/3rd RESPONDENT
2 THE BRANCH MANAGER
LIFE INSURANCE CORPORATION OF INDIA,
TIRUNELVELI BRANCH, PALAYAMKOTTAI,
TIRUNELVELI. ... RESPONDENT/APELLANT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to allow the petitioners to withdraw the rent deposited by the appellant in OS No.22 of 2012 on the file of the Additional District Court (Fast Track Court), Tenkasi and further direct the appellant to pay the rent directly to us pending disposal of the above appeal suit.

Prayer in AS (MD) . 192/ 2021 :

To call for the records and set aside the judgment and decree dated 23.11.2018 passed in O.S.No. 22 of 2012 on the file of the Additional District Court (Fast Track Court), Tenkasi, so far as imposing cost on the appellant/2nd defendant is concerned.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.K.GOVINDARAJAN, Advocate for MR.A.BALAJI, Advocate for the petitioners and of Mr.R.J.KARTHICK, Advocate on behalf of the 1st Respondent, the court made the following order:-

The petitioners in C.M.P.(MD)No.9093 of 2021 are the plaintiffs in O.S.No.22 of 2012 on the file of Additional District Judge / Fast Track Court, Thenkasi. The suit was filed by them for the relief of declaration that the suit property belongs to them and they also sought consequential relief of permanent injunction that the tenant



occupying the suit premises, namely, LIC should pay the monthly rent to them until they deliver the possession of the suit property to the plaintiffs.

2. The contesting respondent herein, namely, the first defendant filed written statement controverting the plaint averments. After a consideration of the evidence on record, the trial Court by judgment and decree dated 23.11.2018 decreed the suit as prayed for. Aggrieved by the same, the first defendant filed A.S. (MD)No.75 of 2019, while the tenant filed A.S.(MD) No. 192 of 2021.

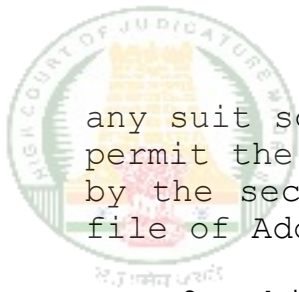
3. I had earlier permitted the tenant to deposit the monthly rent to the credit of the suit till the disposal of the appeal. During the pendency of the suit, the tenant had been remitting the rent to the credit of the suit. It is stated that a sum of Rs.40,00,000/- was remitted to the credit of the suit. I am sure that the Court below would have definitely remitted such deposits in an interest bearing account. If due to any reason such a deposit has not been made, the Court below shall forthwith do so. Be that as it may, the plaintiffs now seek permission to withdraw the deposited rents. This is strongly opposed by the learned counsel appearing for the first defendant.

4. The learned counsel seeks time to file counter.

5. I went through the contents of the pleadings. The stand of the plaintiffs is that the suit property had been sold by the first defendant in their favour under a registered sale deed dated 22.12.2011 vide Ex.A.1. The stand of the first defendant is that he was in urgent need of funds and he approached the plaintiffs for financial assistance. The first defendant in fact wanted a sum of Rs.37,00,000/-. The first plaintiff stated that without execution of sale deed, they would not extend any financial assistance. According to the first defendant, believing the words of the plaintiffs, he executed Ex.A.1. According to him, the transaction was only for security purposes; it was not a sale at all. He would further state that he did not receive any amount from the plaintiffs. However, the Court below rejected the said stand of the first defendant and decreed the suit filed by the plaintiffs.

6. Now the question is whether the plaintiffs can be permitted to withdraw the amounts deposited by the second defendant towards rent.

7. Ex.A.1 is a registered document. Though the stand of the first defendant regarding the character of the suit transaction will have to be decided only in the main appeal, the request of the plaintiffs for withdrawal cannot be completely ignored. The first appeal has been filed only in the year 2019. It may not be listed in the near future. Since the petitioners' case is anchored entirely on



any suit so far for nullifying Ex.A.1, in the interest of justice, I permit the petitioners to withdraw 50% of what was already deposited by the second respondent to the credit of O.S.No.22 of 2012 on the file of Additional District Judge / Fast Track Court, Thenkasi.

8. This civil miscellaneous petition is allowed on these terms. If the first appeal is not disposed within the next one year, it is open for the petitioners to file a fresh CMP.

sd/-

01/11/2021

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/ /2021

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized 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

THE ADDITIONAL DISTRICT JUDGE (FAST TRACK COURT),
TENKASI.

ORDER

IN

C.M.P. (MD)No.9093 OF 2021

IN

A.S. (MD)No.192 of 2021

Date :01/11/2021

SA/PN/SAR.4/22.11.2021/3P/2C