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C.M.S.A.No.17 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.S.A.No.17 of 2003
and CMP.No.10804 of 2003, 1438 and 1490 of 2017,

1. IQBAL BASHA

2. S.M.MOHAMMED ISMAIL

... Appellants

Vs.

1. THEERTHAGIRI CHETTIAR(Died)

2.RAJENDRAN

3. T.NAGARAJAN

S/O LATE K. THEERTHAGIRI

4.T.RAVI

S/O LATE K.THEERTHAGIRI

5. T.VIJAYAKUMARI

D/O LATE K. THEERTHAGIRI

(Respondents 3 to 5 brought on record as LR's
of the deceased R1 vide order dated 14.02.2022
in CMP. No.1436 to 1438 of 2017 in CMSA No.
17/2003 by this Court)

... Respondents

Civil Miscellaneous Second Appeal is filed under order 41(1) Rule

96 read with 100 CPC., as against the judgment and decree dated



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29.01.2003 passed in CMA. No.18/1999 by the Subordinate Judge, Tirupattur, Vellore District confirming the order and decreetal order dated 16.04.1999 passed in REA. No.873/1990 in REP. No.116/1989 in OS. No.1022/1980 on the file of the District Munsif Court, Tirupattur, Vellore District.

For Appellants : Mr.V.V.Sathiya
For Respondents : Mr.V.Raghavachari
For Mrs.V.Srimathi RR3 to 5

J U D G M E N T

This CMSA has been filed seeking to quash the Judgment and decree dated 29.01.2003 passed in CMA. No.18/1999 by the Subordinate Judge, Tirupattur, Vellore District confirming the order and decreetal order dated 16.04.1999 passed in REA. No.873/1990 in REP. No.116/1989 in OS. No.1022/1980 which was filed by the respondent herein and decreed in favour of the respondent, on the file of the District Munsif Court, Tirupattur, Vellore District vide order dated 16.04.1999.

2. The brief fact facts of the case of the appellant is that he is a tenant under Arulmigu Narayanasamy thirukoil Trust which is a temple under the Hindu Religious and Charitable Endowment and he is paying the rent regularly. The trial court, Vide order dated 27.06.2008, in OS.



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No.246 of 2004 by the District Munsif Court, Tirupattur, dated 27.06.2008, the said suit was decreed in favour of the temple by approving the title and possession of the temple to the said property. For more than 20 years, the appellant herein has been paying the rent to the said temple. However, out of blew, the respondents herein filed a suit in O.S.No.1022 of 1980 before the District Munsif Court, Tirupattur, claiming recovery of possession and permanent injunction, which suit was decreed vide order dated 01.03.1989.

3. Without considering the fact that the title and possession to the said property belongs to the temple, which has been recognized by this Court as early as in the year 1977 and in AS. No.122/1973 and serious of orders have been passed by this Court, thereafter, in W.P.Nos.12142 of 1997, 13280/1990 and 6800/1999. However, without advertng to those documents, the execution petition had come to be ordered based on the decree passed in O.S.No.1022 of 1980 in which, the temple has not been made a party.

4. It is the further case of the appellant that O.S.No.246 of 2004 was filed, in which, the respondent was also arrayed as a defendant,



which stood came to be decreed in favour of the temple. Against which, the respondent/defendant had not preferred any appeal. However, based on the judgment obtained in OS.No.1022/1980 the execution petition and execution application have come to be filed, which have been ordered ex-parte infavour of the respondent herein. Aggrieved by which, the present CMSA has been filed.

5. When the appeal was listed for admission, this Court admitted the appeal and the following substantial question of law was framed:

"In the face of the overwhelming documentary evidence produced now by way of additional evidence which prima facie established a contract of tenancy in respect of the property forming the subject matter of O.S.No. 1022/1980 between the appellant and the temple directly, is the decree for possession granted in the above suit (ex-parte decree treating the said property as the exclusive property of the plaintiff in the suit (R-1) legally enforceable."

6. The learned counsel appearing for the appellant, while reiterated the aforesaid averments, which forms part of the appeal. Further submitted that as against the judgment in O.S.No.246 of 2004,



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AS.No.54/2008 had come to be filed before the Sub Court, Tirupattur, which was dismissed. Against which, Section Appeal No.1193 of 2018 has been filed before this Court and the same is pending adjudication.

7. It is the submission of the learned counsel that the title and possession of the property which is under occupation of the appellant herein and which has been decreed in favour of the temple in O.S.No.246 of 2004 has been put to test in the second appeal and any orders that would be passed in the second appeal, would form the basis for the parties to the lis to claim possession and title over the property. Therefore, he submits that this Court may pass the orders safeguarding the interest of the appellant herein till the disposal of the Second Appeal pending before this Court in SA. No.1193 of 2018 and subject to the orders in the result of the second appeal, the parties who succeeds in the same may proceed for taking possession of the property in accordance with law.

8. The learned counsel for the respondents had not disputed the facts as placed above. However, fairly submits that he has no objection to an order being passed as suggested by the learned counsel for the appellant, in which, the interest of both the parties should stand



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safeguarded till the disposal of the second appeal.

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9. Heard the learned counsel for either side and perused the materials available on record.

10. Though the contentions and the counter contentions have been advanced and records have been placed before this Court and in fact, this Court had proceeded to admit the present CMSA on the basis of the additional evidence, which has been filed before this Court. However, in view of the stand taken by the learned counsel appearing on either side that the orders that would be passed in S.A.No.1193 of 2018 would be the basis to decide as to the party, who would be conferred with the possession and title over the said property. Giving an order one way or the other in the present CMSA would not be in the interest of either parties. In such circumstances, the balance of convenience warrants that the interest of both the sides should stand protected till the orders are passed in SA.No.1193 of 2018.

11. In the above said circumstances, the CMSA is disposed of by extending the interim order granted by this Court which shall be in



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operation till orders are passed in the second appeal. Further, the order of eviction passed against the appellant by the trial Court which has been confirmed by the lower appellate Court shall be kept in abeyance and the same would be subject to the result of the second appeal in SA.No.1193 of /2018 which is pending before this Court. Consequent upon the judgment passed in SA.No.1193 of 2018 by this Court, the parties who succeeds in the said appeal, would be at liberty to take further course of action in the manner known to law with regard to the property. The substantial question of law framed by this Court is left unanswered in view of the above said scenario.

12. The CMSA stands disposed of with the above said terms. No costs. Consequently, connected miscellaneous petitions are closed.

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To

1. The District Munsif Court, Tirupattur, Vellore District.
2. The Subordinate Judge, Tiruppattur, Vellore



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M.DHANDAPANI.,J.

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