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CMP(MD)



16

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

Wednesday, the Fifteenth day of March Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice N.SATHISH KUMAR
CMP(MD) No.4876 of 2016

IN
AS(MD) No.78 of 2016

1 ARULMIGHU SUBRAMANIA SWAMY DEITY,
THIRUCHENDUR
REPRESENTED BY ITS
JOINT COMMISSIONER

CUM EXECUTIVE OFFICER,

... Petitioner / Petitioner

Vs

1 S.POOVALINGAM (DIED)

2 SIVASUBRAMANIAN

(Memo dated 16.02.2023 presented before the Court on 27.02.2023 is recorded as R2, who is already on record, is also recorded as LR of the deceased 1st respondent vide court order dated 27.02.2023 made in AS(MD) No.78 of 2016)

3 S.SELVARATHINAM

4 A.RAJ (DIED)

5 S.RAMALAKSHMI

6 A.PRASANNA (DIED)

7 RAMACHANDRAN

8 NARAYANAN

9 V.GOPALAKRISHNAN

10 E.VASUKI

11 A.LAKSHMANAN

12 S.S.NADAR @S.SIVAPRASATH NADAR,

13 UTHIRAPANDIAN(DIED)

(Memo dated 28.09.2022 in USR No.27383 is recorded to the effect that R13 died, vide Court order dated 29.09.2022 made in AS(MD)

<https://www.mh78.gov.in/judis>



14 MANGAI

15 SANTHANAM

16 P.SUBBAMMAL

17 RAMADHAS

18 S.SARASWATHI

19 R.LEELA

20 GANDHIMATHI

21 MURUGESAN

22 S.RATHNASABAPATHI

23 M.ESAKKIAMMAL

24 SHANMUGAVADIVU

25 S.KANDASAMY

26 GOMATHI

27 MUTHULAKSHMI

28 S.MARIYAMMAL

29 S.SUDALAIMUTHU

30 MUTHUKRISHNAN

31 S.SARASWATHI

32 S.ANANTHAVALLI

33 R.SIVANPILLAI

34 S.KANNAN

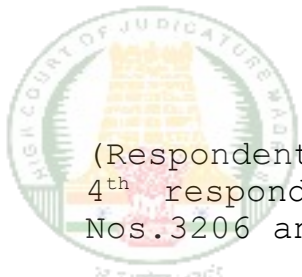
35 S.BALASUBRAMANIAN

36 MAHESWARI,

37 SAKTHIVAIRAM,

38 AKSHAYA (MINOR)

REPRESENTED THROUGH HER MOTHER AND NEXT FRIEND



(Respondents 36 to 38 are brought on record as Lrs of the deceased 4th respondent vide Court order dated 15.09.2022 made in CMP(MD) Nos.3206 and 3210 of 2022 in AS(MD) No.78 of 2016)

39 VALLINAYAGAM,

40 ABINAYA,

(Respondents 39 and 40 are brought on record as Lrs of the deceased 6th respondent vide Court order dated 15.09.2022 made in CMP(MD) Nos.3206 and 3210 of 2022 in AS(MD) No.78 of 2016)

JOTHIKUMARI (DIED)

41.S. SARATHADEVI

SIVAKUMAR (DIED)

42 AYYANAR.

(Respondents 41 and 42 are brought on records as Lrs of the deceased 13th respondent vide Court order dated 29.11.2022 made in CMP(MD) Nos.9520 and 9521 of 2022 in AS(MD) No.78 of 2016)

43 P. ALGAMMAL

44 P. MEENA PRIYADHARSHINI ... Respondents / Respondents

(Respondents 43 & 44 are brought on records as Lrs of the deceased 1st respondent vide Court order dated 16.02.2023 made in CMP(MD) No.1250 of 2023 in AS(MD) No.78 of 2016)

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to permit the petitioner to produce the documents namely 1) certified copy of the sale deed dated 24.03.1902 executed by Veerabhagu Pillai in favour of Vallinayagam Pillai, 2) Certified copy of the sale deed dated 30.01.1906, executed by Kanakammal, W/o. Vallinayagam in favour of Poovalingam Pillai, 3) Certified copy of the order passed in CRP.No.1312/1996 and CMA.No.1680/1996 dated 23.06.1999 and 4) Certified copy of the order passed in Mu.Mu.No.64965/87/V1 dated 19.09.1989 by the Commissioner, HR & CE, Chennai as additional evidence and mark the same as Petitioner / Plaintiff side Exhibits as Ex A9, A10, A11 and A12 in the above the First Appeal.

PRAYER IN AS(MD) NO.78 OF 2016:

To set aside the judgment and decree dated 31.07.2015 passed in O.S.No.33 of 2011 on the file of the II Additional District Judge, Tuticorin.



ORDER : This petition coming up for orders on this day, on perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.M.MUTHUGEETHAYAN, Advocate for the petitioner the court made the following order:-

The original suit has been filed for recovery of possession claimed that the property is a specific endowment in favour of the appellant Temple. The trial Court has dismissed the said suit mainly on the ground that except the documents Ex.A.4 and Ex.A.6, no other document has been filed. Against which, the present appeal is filed.

2. During the pendency of the appeal, the appellant Temple has come up with the application in C.M.P. (MD) No. 4876 of 2016 to produce the documents as additional evidence. Those documents were already subject matter of the decision in Trust O.P. No. 5 of 1996 dated 16.04.2002 before the District Court, Thoothukudi, wherein these documents have been considered and decision has been arrived. The said Trust O.P. was dismissed. Now, the documents which had already been tested before the District Court, now sought to be received as additional evidence before this Court.

3. Considering the above, as the documents, which are the subject matter of this petition, had already been tested before the District Court, in a petition moved by the first respondent herein seeking permission to sell the property, this Court is of the view that those documents are absolutely necessary. Though several reasons assigned in the affidavit filed in support of this petition, in order to enable the Court to effectively adjudicate upon and settle all the questions involved in the suit, these documents are necessary. Therefore, this application is allowed and those documents are marked as Ex.A.9 to Ex.A.12.

4. Both side has no objection to receive the document and submitted that the documents may be marked. The petitioner submitted that no oral evidence is required and the respondents also submitted the same. In view of the same, this petition is allowed and the documents are marked as Ex.A.9 to Ex.A.12.

5. Heard in part. The learned counsel appearing for the respondents seeks time for arguing the appeal.

6. List the appeal on 29.03.2023 finally.

sd/-

15/03/2023

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/03/2023

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



CMP(MD)



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To

The II Additional District Judge,
Thoothukudi.

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Copy to:

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

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate (SR-4331[I] dated
16/03/2023)

ORDER

IN

CMP (MD) No.4876 of 2016

IN

AS (MD) No.78 of 2016

Date :15/03/2023

ED/CG/SAR-4 (23/03/2023) 5P 3C