



C.M.A.(MD).No.903 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.903 of 2021

Perumal (Died)
Krishnan

... Petitioner/Petitioner/2nd Appellant

Vs.

Ponnan Ambalam (Died)

1.Andi Ambalam

VellaiAmbalam (Died)

NachAmbalam (Died)

2.Katrani

3.Periyakkal

4.Letchumayee

5.VeerAmbalam

6.ChellAmbalam

7.Podhumponnu

8.Veluchamy

Minor Eswari (Died)

9.Nallathambi

10.VallaiyAmbalam

11.Murugan

... Respondents/Respondents 2, 5-11, 13-15/

Respondents 2, 5-11, 13-15



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PRAYER : Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Civil Procedure Code to set aside the fair and decreetal order dated 02.01.2020 passed in I.A.No.5 of 2016 in A.S.No.15 of 2012 on the file of the learned Subordinate Judge, Vendasandur and to allow the appeal.

For Appellant : Mr.M.Saravanan

For Respondents : Mr.S.Kadarkarai for R2 to R8
No Appearance for R9 to R11

JUDGMENT

This appeal has been directed against the fair and decreetal order dated 02.01.2020 passed in I.A.No.5 of 2016 in A.S.No.15 of 2012 on the file of the learned Subordinate Judge, Vendasandur.

2.The facts in brief:

One Perumal Ambalam filed suit in O.S.No.65 of 1995 before the District Munsif cum Judicial Magistrate, Vendasandur, through her power agent the appellant herein for declaration of title and permanent injunction. The suit was dismissed by the trial Court on 28.11.2003. Against which, he filed A.S.No.15 of 2012 before the Sub Court, Vendasandur through the appellant herein as Power Agent.



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3. Pending the appeal proceedings, the Permal Ambalam died.

Thereafter, the appellant filed application in I.A.No.22 of 2012 to prosecute the appeal by substituting himself as a sole appellant. On that ground he relied a Will stated to have been executed by Perumal Ambalam on 17.10.2001, that application was allowed. But, the second class legal heirs of the deceased Perumal Ambalam were impleaded or brought on record as respondents by the trial Court by exercising the powers conferred upon it as per Order 1 Rule 10(2) of CPC.

4. Challenging that order, this appellant filed C.R.P.(MD).No.2335 of 2013 and that was dismissed by this Court by the order dated 11.08.2023. In the facts and back ground, the appeal itself was dismissed for default on 05.04.2016, the date on which the above said Civil Revision Petition was pending before this Court. To restore the appeal I.A.No.5 of 2016 was preferred by this appellant, that came to be dismissed by the appellate Court. Challenging the same, this appeal is preferred.

5. Heard both sides.



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6. When the Civil Revision Petition was pending before this Court, it may not be proper on the part of the appellate Court, to dismiss the appeal itself on 05.04.2016. The reason for the dismissal, according to the appellate Court is that no stay order was passed in the above said Civil Revision Petition. Apart from that it is also stated that there was a huge delay on the part of the appellant to take steps to implead himself as a party. I.A.No.22 of 2012 was ordered long back and in spite of that no steps were taken by the appellant. But, another ground of rejection may not be appropriate, wherein, it has been stated that this appellant does not have any right to prosecute the appeal. He has no such right. But as stated and observed by this Court in C.R.P.(MD).No.2335 of 2013, dated 11.08.2023, this observation also is not proper, since the appellant claims right over the property as per the Will executed by the deceased Perumal Ambalam, who is the original appellant. Since the suit is filed for declaration and permanent injunction, when the appellant claims that he became the owner of the property by virtue of the above said Will naturally, he got every right to prosecute the appeal. On that ground the observation made by the appellate Court that this appellant has no right



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to prosecute the appeal, is not proper. On that ground the findings recorded is also not proper. Accordingly, the order of dismissal passed by the appellant Court on that ground requires interference.

7. Accordingly, the order passed by the learned Subordinate Judge, Vedasandur, in I.A.No.5 of 2016 in A.S.No.15 of 2012 dated 02.01.2020 is hereby set aside and the petition filed by the appellant to restore the A.S.No.15 of 2012 stands allowed. Considering the oldness of the matter there shall be a direction to the appellate Court to dispose the appeal after completing all the formalities within a period of six months. With that direction this appeal stands allowed. No costs.

16.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The Subordinate Judge, Vedasandur.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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