

**(2011) 08 MAD CK 0167**

**Madras High Court**

**Case No:** C.R.P (NPD) (MD) No. 654 of 2011 and M.P (MD) No. 1 of 2011

N.T. Suyambu Prakasam, N.T.  
Radhakrishnan and N.T.  
Murugesan

APPELLANT

Vs

K. Gangadharan

RESPONDENT

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**Date of Decision:** Aug. 2, 2011

**Hon'ble Judges:** C.S. Karnan, J

**Bench:** Single Bench

**Advocate:** S. Ramesh and V. Raghavachari, for the Appellant; M. Kalyanasundaram and N.S. Ramakrishnadoss, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

C.S. Karnan, J.

This petition has been filed by the Petitioners/Appellants/Defendants to expedite the disposal of the I.A. No. 246 of 2010 in A.S. No. 76 of 2010 pending on the file of the Principal District and Sessions Judge, Kanyakumari at Nagercoil.

2. The short facts of the case are as follows:

The Respondent/Plaintiff has filed a suit in O.S. No. 202 of 1997 against the revision Petitioners/Defendants to grant a preliminary decree for redemption of the plaint schedule property on deposit of Rs. 35,000/-being the mortgage money paid by the Plaintiff into the court as directed by the court, directing the Defendants to bring into the court all documents relating to the plaint schedule property, to be delivered up to the Plaintiff and for recovery of the plaint schedule property from the Defendants, and further mesne profits at the rate of Rs. 10,800/- p.a and other relief.

3. The said suit had been resisted by the Defendants. After adjudication, the suit was dismissed with costs. Aggrieved by the said decree and judgment passed in O.S. No. 202 of 1997, dated 20.12.1999, on the file of the Principal Subordinate Court, Nagercoil, the Plaintiff has filed an appeal suit in A.S. No. 17 of 2010, before the

Additional District Court, Kanyakumari at Nagercoil. The learned Judge set aside the judgment and decree of the trial Court and decreed the suit and passed a preliminary decree on 13.04.2001. Aggrieved by the said judgment and decree, the revision Petitioners filed a second appeal in S.A. No. 1974 of 2001 before the Principal Bench of this Court. The same was admitted by this Court and an order of interim stay was granted for passing a final decree alone in CMP. No. 20772 of 2001. In the mean time, the Respondent/Plaintiff filed an interlocutory application in I.A. No. 137 of 2009 for passing of a final decree. The second appeal No. 1974 of 2001 was dismissed for default on 11.12.2008. The same was restored after filing restoration application. This is the factual position.

4. The revision Petitioners filed a counter in the said interlocutory application and enlightened this aspect to the trial court. But, the trial court refused to accept the contention and passed a final decree on 01.10.2010 and allowed the I.A. No. 137 of 2009. After passing final decree, the Respondent/Plaintiff filed an execution petition in E.P. No. 7 of 2011 on the file of the trial Court for delivery of property and for other consequential prayers. Aggrieved by the said order in final decree in I.A. No. 137 of 2009, these revision Petitioners filed A.S. No. 76 of 2010 on the file of the Principal District Court, Kanyakumari along with stay petition, which is pending. The Plaintiff/Respondent is wantonly and deliberately evading to receive notice in the said appeal. Under the circumstances, the above civil revision petition has been filed to expedite the disposal of the interlocutory application in I.A. No. 246 of 2010 in A.S. No. 76 of 2010 pending on the file of the Principal District Judge, Kanyakumari at Nagercoil.

5. The learned Counsel for the revision Petitioners argued that the second appeal No. 1974 of 2010 was restored. As such, the interim order passed in CMP. No. 20772 of 2001 has come into force. Therefore, the E.P. Proceeding for delivery of property is not maintainable.

6. The learned Senior Counsel argued that it is a contested decree which has been granted by the trial Court. Against the decree and Judgment, the matter has gone upto this Court by way of second appeal in S.A. No. 1974 of 2001. The same was dismissed on 11.12.2008. As such, the E.P. Proceedings can be executed. The learned senior counsel further agreed for speedy trial to expedite the disposal of the I.A. No. 246 of 2010 in A.S. No. 76 of 2010 pending on the file of the Principal District Judge, Kanyakumari at Nagercoil. Further, the learned Senior Counsel argued that the interim stay granted in M.P. No. 1 of 2011 shall be vacated.

7. The learned Counsel for the Petitioners has prayed for continuation of the interim order for a period of four weeks.

8. In view of the facts and circumstances of the case and arguments advanced by the learned Counsel for the Petitioners and arguments advanced by the learned Senior Counsel for the Respondent, this Court is of the considered opinion that

speedy trial is necessary in this case. Hence, this Court directs the learned Principal District Judge, Kanyakumari to dispose the case in A.S. No. 76 of 2010 along with I.A. No. 246 of 2010 within a period of three months. The interim stay granted by this Court in M.P. No. 1 of 2011 on 26.06.2011 will remain in force till 30th August 2011. Thereafter, an order of stay of the operation of the order in I.A. No. 137 of 2009 in O.S. No. 202 of 1997 on the

C.S.KARNAN,J

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file of the Principal Subordinate Judge, Nagercoil will be vacated automatically, without further notice. Accordingly ordered.

9. In the result, the above revision petition is disposed of with the above observations. There is no order as to costs.