

ITEM NO.16

COURT NO.12

SECTION XII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 34330/2016

(Arising out of impugned final judgment and order dated 31/03/2016  
in RA No. 150/2014 passed by the High Court Of Madras)

HAREENDRAN &amp; ORS.

Petitioner(s)

VERSUS

SUKUMARAN AND OTHERS

Respondent(s)

(with interim relief and office report)

Date : 20/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. K. Parasaran, Sr. Adv.  
Mrs. Parthasarathy, adv.  
Mr. G. Balaji, Adv.

For Respondent(s) Mr. Jayanth Muthraj, Adv.  
Mr. M.P. Parthiban, Adv.  
Mr. T. R. B. Sivakumar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed  
order.

(NEELAM GULATI)  
COURT MASTER

(TAPAN KR. CHAKRABORTY)  
COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3151 OF 2017  
(Arising out of SLP(C) Nos. 34330 of 2016)

HAREENDRAN & ORS.

Appellant (s)

VERSUS

SUKUMARAN AND OTHERS

Respondent(s)

O R D E R

Leave granted.

Heard Mr. K. Parasaran, learned senior counsel for the appellants and Mr. Jayanth Muthraj, learned counsel for the respondents.

The appellants have questioned the legality of the order passed by the Madurai Bench of High Court of Madras on 31.03.2016 in Review Application (MD) No. 150 of 2014 by which the High Court has reviewed the Order and recalled the Judgment & Order dated 04.04.2014 passed in CMA(MD) No. 333 of 2009. Judgment dated 27.11.2008 passed in A.S. No. 4 of 2008 and judgment dated 23.11.2007 passed in O.S.

No. 19 of 2007 has been restored while allowing the Review Application.

The plaintiff has filed a suit for permanent injunction before the trial court. It was averred that suit schedule properties belonging to Mahadeva Iyer -paternal grandfather of first plaintiff. On 28.04.1951, Ganapathy had mortgaged the suit property to Periyakaruppanvide for five years and had redeemed the same within five years and thereupon was put back in possession and enjoyment of the property. After the demise of Ganapathy Iyer, the first plaintiff Madhava Shastri had been put in enjoyment of the property. The land had been acquired which was questioned in W.P. No. 2490 of 1991 and High Court had passed the order on 2.12.1993 in favour of the plaintiff and confirmed their right in the land comprised in survey No. 445 IB. One Maria Sampooram, resident of Rameshwaram had fabricated a deed and tried to jeopardise the rights of the plaintiff as such he filed OS No. 122 of 2002 before the Sub court at Ramnad. The suit in question was transferred to District Munsif Court

at Rameshwaram which had pecuniary jurisdiction and it was re-numbered as O.S. No. 14 of 2004. The suit was valued at 2,00,000/- and accordingly the court fees was paid. The prayer was made in the suit that permanent injunction be granted to first plaintiff with respect to property in Schedule I and to plaintiff No.2 with respect to property in Schedule II, restraining the defendant from interfering in peaceful enjoyment of the suit property.

An application was filed under Order 7 Rule 11 by the defendant sukumaran and others raising the objection with respect to non redemption of the property and consequently suit being barred by limitation. However trial court considered it appropriate to treat two issues as preliminary one on the aforesaid aspects of redemption and limitation and decided them vide order dated 23.11.2007 in favour of defendants.

Aggrieved by the said order, Plaintiff preferred appeal bearing A.S. No. 4 of 2008 in the court of Principal District Judge in Ramanathapuram. The Principal District Judge vide order dated

27.11.2008 held that the aforesaid issues were mixed questions of law and facts thus could not have been decided as preliminary issues, allowed the appeal setting aside the judgment and decree of the trial court and remanded the case to the trial court. Aggrieved thereby the defendant preferred CMA(MD) No. 333 of 2009 in the High Court of Madras at Madurai the same was initially dismissed vide order dated 4.4.2014. However the unsuccessful defendant preferred Review Application. Review Application has been allowed and the order of 04.04.2014 passed by the High Court as well as by the District Judge has been set aside and the order passed by the trial Court has been restored. Aggrieved thereby the plaintiffs have come up in the appeal.

We have heard learned counsel for the parties at length. In our opinion, the issues which were decided as preliminary issues with respect to redemption of the mortgage as well as with regard to Limitation could not have been decided as preliminary issues by the trial court being mixed question of law and facts. The plaintiff has

clearly averred in the plaint that there was redemption and thereafter land acquisition of the land took place which was quashed and case was decided in their favour as such they continued to be in possession of land. In the circumstances, question of factum of redemption and its legality could not have been decided as preliminary issue. Consequently, the question of limitation also, which was dependent upon the aforesaid facts, could not have decided as preliminary issue. The trial court grossly erred in law in treating the aforesaid as preliminary issues. The orders passed by the District Court as well as by the High Court on 4.4.2014 were proper and have been illegally set aside by the impugned order. The matter is remitted to the trial court to decide the said issues along with other issues after recording the evidence. It is made clear that any observation made in orders passed by the trial court, District court or by the High court shall not come in the way of the parties while the trial court decide the matter afresh after recording the evidence.

Mr. K. Parasaran, learned senior counsel submitted that ground nos. 4,5,6,7 & 9 are retained and other grounds are withdrawn. Statement is placed on record.

The Appeal is allowed. There shall be no order as to costs.

.....J  
(ARUN MISHRA)

.....J  
(AMITAVA ROY)

NEW DELHI  
FEBRUARY 20, 2017