

(1966) 08 MAD CK 0007

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 8793 of 1966 in Second Appeal No. 557 of 1960

M.N. Subramania Mudaliar and Others

APPELLANT

Vs

Shanmugham Chettiar and Others

RESPONDENT

Date of Decision : 24-08-1966

Acts Referred:

Citation : AIR 1968 Mad 48

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Judgement

(1) In this case by the compromise decree passed on 27-9-1962, defendants 2 to 5 in O.S. 1033 of 1956 were directed to remove the asbestos

shed and deliver possession of the property to the appellant (plaintiff in O.S. 1033 of 1956 on or before 31-8-1966 and in default the appellants

shall be entitled straightway to recover possession of the property from the defendants 2 to 5 in the said suit by executing the decree. By means of

this petition the said defendants 2 to 5 pray for further extension of time for removal of the shed and delivery of possession of the premises to the

plaintiffs. They say that though they expected to get possession of an adjoining vacant site within the time stipulated, it has not been possible for

them to do so. It is urged on their behalf by Sri T. K. Subramania Pillai, the learned counsel, that they have invested about rupees three lakhs on

the property, and that it will cost undue hardship to them if they are directed to remove the shed and deliver possession to the plaintiffs before 31st

August 1966.

(2) This application is stoutly opposed by the plaintiffs-respondents. Their learned counsel Sri D. Ramaswami Aiyanger urges that the decree is a

compromise decree, that time was of the essence of the compromise and that this court has no jurisdiction to extend the time fixed in the

compromise. He cites the decision in Bethanna Nadar Vs. M. Srinivasan and Others, , which itself follows a decision of the Supreme Court. That

decision points out that in a compromise decree where time is of the essence of the contract, the court has no jurisdiction to extend the time. Sri T.

K. Subramania Pillai has naturally not been able to cite any decision to the contrary. But he urged that the clause fixing the time till 31st August

1966 is a penal clause meant to be in terrorem and that I have jurisdiction to relieve the defendants against that clause. I do not see any reason to

hold that the clause is in terrorem. The defendants were given four years time to remove the shed which is more than what is usually given in such

compromise decrees. Therefore they had ample time and there is nothing to show that it was intended to be by way of terrorem. it is clear that the

party, the defendants willingly agreed to deliver possession before 31st August 1966. Accordingly I have no power to extend the time and in this

view of the matter, I dismiss the petition but without costs.

(3) Sri T.K. Subramania Pillai applies for leave to appeal. But since the position seems to be well settled, it is not possible to grant leave.

(4) Petition dismissed.