

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.441 of 2000

Sadasivam

.. Appellant

Versus

1.Paramasivam

2.Munusamy Naicker

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 21 Rule 58(4) of C.P.C. against the judgment and decree dated 01.10.1999 made in E.A. No.472/1996 in E.P. No.164/1995 in O.S. No.118/1991 on the file of the Additional Sub Judge, Pondicherry.

For appellant : Mr.R.Sunil Kumar

For respondents : Mr.G.Rajan for R1

R2-set exparte before this Court

J U D G M E N T

The Civil Miscellaneous Appeal, filed by the appellant, is directed against the correctness of the impugned award dated 01.10.1999 made in E.A. No.472/1996 in E.P. No.164/1995 in O.S. No.118/1991 on the file of the Additional Sub Judge, Pondicherry.

2.This Court, having issued notice on 04.08.2010, directed the appellant to take fresh steps by paying fresh batta in respect of R2, failing which the appeal against R2 shall stand dismissed automatically without any further reference to this Court. In spite of repeated adjournments and opportunities have been given to the appellant to take service on R2, no effective steps have been taken. Hence, the second respondent is set exparte. Since the matter is pending for 16 long years, no purpose would be served by adjourning the matter again.

3.Learned counsel appearing for the appellant/subsequent purchaser would submit that the appellant being a bonafide purchaser of a portion of schedule mentioned property in question from the second respondent/ judgment debtor by the sale deed dated 17.04.1996, has become the owner of the property. Therefore, the order of attachment made to the property in question is liable to be cancelled for the reasons that the appellant, being subsequent purchaser was not made as a party to the suit. Moreover, when the appellant has not borrowed any money from the decree holder and equally the property in question was also not under hypothecation, the learned Court below ought to have seen that the property in question is not liable for attachment.

4. But this court is not able to follow any of the contentions advanced by the learned counsel for the appellant. The reasons are that the second respondent herein being the judgment debtor, suffered a decree in O.S. No.118 of 1991 for a sum of Rs.42,525/-. As he has not paid the decretal amount, E.P. was filed for attachment of the properties, which was acquired through his mother Angammal @ Parvathiammal. Considering two vital aspects that there was an agreement of sale entered into between the judgment debtor and the appellant on 15.01.1996 for sale of the property covered under Ex.A1/sale deed and E.P. was filed on 13.10.1995 and thereupon a notice was sent to the judgment debtor, which was returned with a remark as there was no such residence, the learned Court below has rightly come to the conclusion that Ex.A2/sale agreement has emerged only after the filing of E.P. and the judgment debtor receiving the E.P. notice in respect of attachment, despite receipt of the notice, has entered into an agreement to sell the property in favour of the third party herein and finally has rightly held that the sale deed dated 17.04.1996, is a sham and nominal document to defraud the decree holder. Therefore, when a clear finding has been given against the appellant that he was not a bonafide purchaser, this Court is not able to find any merit in the appeal.

5. One another finding recorded by the learned Executing Court deserves mention herein. It appears that the property in question belongs to undivided portion of family property. Keeping in mind the nature of the property, a portion thereof has been attached. Learned Executing Court has proceeded to hold that even for the sake of argument if it is taken that there was an oral partition among the four brothers, as a prudent purchaser, the appellant, should have demanded the other three brothers also to sign either in Ex.A1 or in Ex.A2 and that too in the absence of partition deed, other three brothers atleast could have been asked to sign as witnesses so that those three brothers would be bound by the sale deed. But no such steps were taken. While that being the case, a purchaser of an undivided share and that too in the absence of a partition deed, should have enquired the judgment debtor's brothers and others. The appellant's failure to do all the factual requirements, would clearly show his conduct that he could not be a bonafide purchaser at any point of time. Therefore, when it is a clear case that after receipt of notice issued by the Executing Court, the judgment debtor has fraudulently entered into the agreement with the appellant herein, this Court is not inclined to entertain the appeal and the same fails and dismissed. No costs. Consequently, connected

M.P. is closed.

27.09.2016

Index : Yes / No
vga

To

1.The Additional Sub Judge, Pondicherry

2.The Section Officer, V.R.Section,
High Court, Madras.

T.RAJA, J.

vga

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