

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

CMSA No.23 of 2015 and
M.P.No.1 of 2015

M.Karunakaran

...Appellant

versus

1.M.Nagarajan

2.M.Rajeswari

3.M.Lakshmi

4.M.Santhamani

...Respondents

PRAYER: Civil Miscellaneous Second Appeal filed under Order 42 Rule 2 of the Code of Civil Procedure against the judgment and decree dated 12.02.2015 made in A.S.No.45 of 2014 on the file of V Additional Subordinate Judge's Court (Trainee District Judge) Coimbatore confirming the judgment and decree dated 21.03.2014 made in E.A.No.44 of 2014 in E.P.No.9 of 2013 on the file of Principal District Munsif Court, Coimbatore.

For Appellant : Mr.S.Mukunth for
M/s.Sarvabhauman Associates
For Respondents : Mr.S.D.S.Philip

J U D G M E N T

This Civil Miscellaneous Second Appeal is directed against the judgment and decree dated 12.02.2015 in A.S.No.45 of 2014, whereby and where under, the learned V Additional Sub-Judge, Coimbatore, upheld the judgment and decree dated 21.03.2014 in E.A.No.44 of

2014 in E.P.No.9 of 2013 on the file of learned Principal District Munsif, Coimbatore.

2. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

3. The appellant filed a petition before the Executing Court in E.A.No.44 of 2014 invoking Order XXI Rule 97 of the Code of Civil Procedure. The appellant contended that he is in possession and enjoyment of the property and as such, there is no question of executing the decree, which is the subject matter of E.P.No.9 of 2013.

4. The learned District Munsif found that the father of the appellant was the judgment debtor and as such, obstruction petition at his instance is not legally maintainable. It was found that the judgment of the Trial Court was challenged by the predecessor-in-interest of the appellant in S.A.No.940 of 1995. The second appeal was dismissed and only thereafter, the decree holders filed the petition for execution.

5. Both the Trial Court as well as the First Appellate Court concurrently held that the appellant wanted to initiate second round of

litigation by invoking Order XXI Rule 97 of CPC. The appellant, being the son of the judgment debtor in E.P.No.9 of 2013 is bound by the decree passed by the Court. There is no question of filing an obstruction petition by the legal representatives of the judgment debtor.

6. There is no question of law, much less substantial question of law involved in this civil miscellaneous second appeal. I am therefore of the view that the appeal is liable to be dismissed.

7. In the upshot, I dismiss the Civil Miscellaneous Second Appeal. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2016

Index : Yes/No

svki

K.K.SASIDHARAN, J.

(svki)

To

1. The V Additional Subordinate Court, Coimbatore
- 2.The Principal District Munsif Court, Coimbatore.

CMSA No.23 of 2015

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