

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

O.S.A. No.247 of 2016

V.Mariammal Appellant

-vs-

1.The Official Assignee
High Court, Madras 600 104.

2.K.Ganeswaran

3.The Branch Manager,
State Bank of Travancore,
Anna Nagar West Exten. Branch,
Chennai 600 101. Respondents

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent against the order dated 10.08.2016 passed in Application 206 of 2009 in I.P.No.181 of 1997 on the file of original side of this Court.

For Appellant : Mr.M.Chidambaram

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The appellant, as insolvent, seeks to set aside the transfer made by herself on 07.02.1996 in favour of the third party / second respondent in respect of immovable property owned by her. The plea is that this transfer was effectuated by fraud and coercion and had been included in the appellant's debtor petition.

2.The Official Assignee himself stated that the endeavour of the appellant was hit by Section 137 of the Limitation Act, 1963, a stand which was naturally supported by the second respondent.

3.In so far as the rights of respondent no.3 / bank are concerned, they are stated to have been crystallized, as the property had been mortgaged to the bank in respect of which orders are passed on 10.12.2012.

4.The endeavour of the appellant has been unsuccessful as per the impugned order dated 10.08.2016 with the learned Single Judge noticing that the appellant had filed A.No.206 of 2009 after more than ten years and in view of judicial pronouncements, Section 137 of the Limitation Act, 1963, would come into play. The rights of the bank as per order dated 10.12.2012 have been protected by stating that the sale was upheld but subject to the mortgage of respondent no.3/bank.

5.In our view, the learned Single Judge has rightly concluded that the appellant was aware of all the facts and is now seeking to rake up the issue belatedly to cause loss to the third party, having completed the transaction herself, albeit within the window of two years prior to the claim to declare herself as insolvent. If we may state, normally this provision is available for the benefit of creditors to prevent the insolvent from fraudulently dealing with property so as to defeat the claims made against him. But, in the present case, it is the debtor herself who seeks to reopen the transaction.

6.We find no ground to interfere with the order of the learned Single Judge in the appeal.

7.Original Side Appeal, accordingly, stands dismissed. No costs. Consequently, C.M.P.No.19607 of 2016 also stands dismissed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

(sra)

To

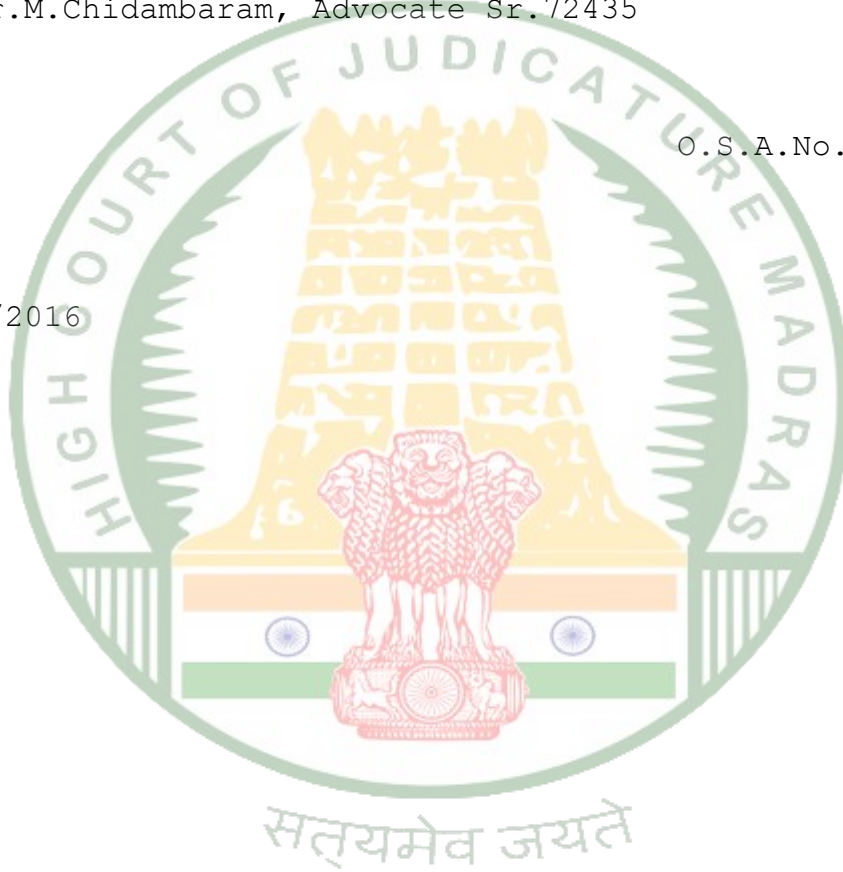
1.The Sub Assistant Registrar,
Original Side, Madras High Court,
Chennai.

2.The Official Assignee,
High Court, Madras-104.

+1cc to Mr.M.Chidambaram, Advocate Sr.72435

O.S.A.No.247 of 2016

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