



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2016

CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) .No.160 of 2016

and

C.M.P(MD) .No.2521 of 2016

M.Elizabeth Rani

... Appellant

Vs.

1.R.Natarajan Chettiar

2.K.K.M.Muniyasamy(died)

3.M.Suresh @ Jeganathan

4.M.Maheswaran

5.M.Shankar

6.M.Muneeswari(died)

... Respondents

Civil Miscellaneous Appeal is filed under Order 43 Rule 1(a) of C.P.C., against the order dated 11.12.2015 made in E.A.No.28 of 2012 in E.P.No.26 of 2010 in O.S.No.41 of 2007 passed by the learned Additional District Judge, Ramanathapuram.

For Appellant : Mr.R.Narayanan

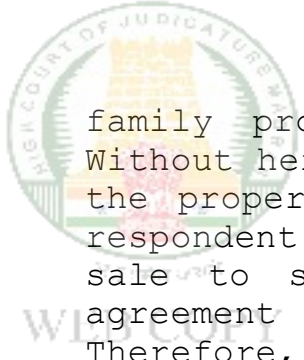
For R1 : Mr.V.Sitaranjandas

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed to set aside the order dated 11.12.2015 made in E.A.No.28 of 2012 in E.P.No.26 of 2010 in O.S.No.41 of 2007 passed by the learned Additional District Judge, Ramanathapuram.

2.The appellant is a third party in the suit and sixth respondent in E.P.No.26 of 2010. The first respondent is the plaintiff, who filed a suit for specific performance of execution of an agreement of sale executed by the respondents 2 to 4. The said suit was decreed on 23.01.2009. The first respondent filed E.P.No.26 of 2010 for execution of the sale deed. Pending E.P., the second respondent died. The respondents 2 to 5 are the sons and the appellant and sixth respondent are daughters and they are impleaded as respondent Nos.5 and 6 in the E.P, after the death of the second respondent. The appellant after being impleaded as sixth respondent had filed E.A.No.28 of 2012, claiming 1/5<sup>th</sup> share in the property mentioned in the schedule of property.

<https://hcservices.equ.gov.in/hcservices/> to the appellant, the property purchased by her paternal grand-father Muthiah Nadar and after his death, in the partition, it was allotted to her father. Therefore, it is a joint



family property and the appellant is one of the coparcener. Without her knowledge, the respondents 2 to 5 have partitioned all the properties and the suit property was allotted to the second respondent. The respondents 2 to 5 entered into an agreement of sale to sell the property to the first respondent. The said agreement of sale is not binding on 1/5<sup>th</sup> share of appellant. Therefore, she filed E.A for claiming her 1/5 share in the property.

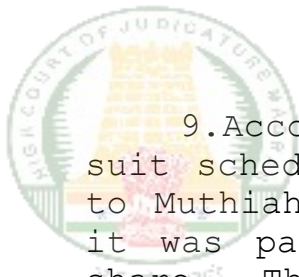
4.The first respondent filed a counter affidavit stating that it is not correct to state that the property belonged to the grand-father of the appellant. On the other hand, the property was purchased by her grand-mother Rajamani Ammal and after her death, it was allotted to the share of the second respondent in the partition. Therefore, the appellant is not a coparcener and she is not entitled to get any share. The respondents also contended that E.P is filed for execution of sale deed as per the decree of specific performance passed in O.S.No.41 of 2007 and the petition filed under Order 21 Rule 58 C.P.C., are not maintainable.

5.The learned Judge considered all the facts and materials on record and also the petition filed Order 21 Rule 58 C.P.C., dismissed the application filed by the appellant. Against the said order of dismissal, the present civil miscellaneous appeal is filed.

6.The learned counsel for the appellant contended that the learned Judge failed to see that the properties were purchased by Muthiah Nadar in the name of his wife Rajamani Ammal from and out of the joint family income. The said Rajamani Ammal did not have any independent income. This fact was reflected in the registered partition deed by which all the properties of Muthiah Nadar and Rajamani Ammal are partitioned. The property in question was allotted to the share of the second respondent which will clearly show that the appellant is coparcener and the learned Judge had erred in dismissing the application and the learned Judge wrongly interpreted the provision under Order 21 Rule 58 C.P.C and dismissed the application.

7.The learned counsel appearing for the caveator submitted that it is a suit for specific performance. The suit was decreed. Now, it is not pending. If the petitioner has any right, she has to file a separate suit for partition against other defendants. Now, only to prevent the respondents from enjoying the fruits of decree, she has come out with the present petition and prayed for dismissal of this C.M.A.

8.I have heard Mr.R.Narayanan, learned counsel appearing for the appellant and Mr.V.Sitharanjandas, learned counsel appearing for the first respondent and carefully perused the entire materials on record.



9. According to the appellant, she is having 1/5<sup>th</sup> share in the suit scheduled property as coparcener and the properties belonged to Muthiah Nadar, her paternal grand father and after his death, it was partitioned among his sons and she is entitled to 1/5<sup>th</sup> share. Therefore, agreement of sale and decree is not binding on her in respect of 1/5<sup>th</sup> share.

10. From the materials, it is seen that the appellant admitted that the property is in the name of her paternal grand-mother Rajamani Ammal, but the same was purchased in the name of her paternal grand-mother by her grand father from and out of the joint family income. Whether the property standing in the name of Rajamani Ammal, which was allotted to the second respondent is an ancestral property or not and whether the agreement of sale executed by the respondents 2 to 5 in favour of the first respondent is valid or not, cannot be decided in the execution proceedings. The Execution Court cannot go beyond the decree. The contention of the learned counsel for the appellant that the learned Judge did not appreciate properly the scope of Order 21 Rule 58 C.P.C., is not acceptable. The said rule relates to property which is sought to be attached or the property already attached. In this E.P., no relief with regard to the attachment and the sale of the property is sought for by the first respondent. It is only to execute the sale deed as per the decree passed in O.S.No.41 of 2007.

11. The learned Judge considered all these aspects and dismissed E.A filed by the appellant. The learned Judge has also held that in the facts of the case, the application filed under Order 21 Rule 58 C.P.C., is not applicable. In view of the above discussion, this Court finds no infirmity or irregularity, warranting interference by this Court.

12. In the result, the civil miscellaneous appeal is dismissed. No costs. Consequently, the connected C.M.P is also closed.

Sd/-  
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge, Ramanathapuram.

+ 1 CC TO MR.R.NARAYANAN, ADVOCATE IN SR NO. 14178/16  
+ 1 CC TO MR.V.SITHARANJANDAS, ADVOCATE IN SR NO. 14111/16

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TE/SKS-RR/ : 29/04/2016 : 3P/4C

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