

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

Second Appeal No. 529 of 2017
and
C.M.P. No.12744 of 2017

V.G.P. Agro Farm Pvt. Ltd.
Represented by its Director
Rajadass V.G.Pannerdass ...Appellant/3rd Party in AS.

vs.

1. Gopal ...1st Respondent/Plaintiff
2. Nagamma
3. Sabjan Saheb ...Respondents 2&3/Defendants 2&3

PRAYER : This Second Appeal is filed under Section 100 C.P.C., against the Judgment and decree dated 25.02.2013 made in A.S.No.24 of 2009 on the file of Additional District Court, Krishnagiri, confirming the Judgment and Decree dated 05.01.2000 made in O.S.No.206 of 1996 on the file of the Sub Court, Hosur.

For Appellant ... Mr. K. Chandrasekaran
For Respondents ... Mr. M. Tamil Thendral Arasu
for Mr. P. Mani for R1

J U D G M E N T

This Second Appeal arises out of the Judgment and decree dated 25.02.2013 made in A.S.No.24 of 2009 on the file of Additional District Court, Krishnagiri, confirming the Judgment and Decree dated 05.01.2000 made in O.S.No.206 of 1996 on the file of the Sub Court, Hosur.

2. Brief facts of the case is as follows :-

The 1st respondent filed a suit in O.S. No. 206 of 1996, for specific performance and other reliefs, against the 2nd and 3rd respondents. The appellant is a third party to the suit. The defendants in the suit, who are 2nd and 3rd respondents herein, remained ex-parte and hence an ex-parte decree was passed on 05.01.2000, in favour of the 1st respondent herein. Subsequently, the 1st respondent herein filed E.P. No.162 of 2005 for execution of the sale deed and the lower Court also executed

the sale deed by initiating ex-parte proceedings. Further, R.E.A. No. 2 of 2009 was filed to take delivery of possession of the suit property, by the 1st respondent herein. On 02.02.2009 and 15.03.2009, when the 1st respondent attempted to cut and carry away the Eucalyptus trees from the suit property, the appellant who was in possession of the suit property by virtue of the sale agreement dated 30.12.1991 and also based on the irrevocable power of Attorney dated 27.03.1995 with the 2nd and 3rd respondents, came to know about the entire case of the respondents. Therefore, the appellant filed an appeal suit in A.S. No.24 of 2009 before the Principal District Court, Krishnagiri, challenging the ex-parte judgement and decree passed in O.S. No.206 of 1996 on 05.01.2000. The appeal suit was later transferred to the Additional District Judge, Krishnagiri. According to the appellant, the 1st respondent had filed the suit for specific performance without impleading the appellant, who is the prior agreement holder of the suit property and had obtained the decree from the lower court. Since the 1st respondent proceeded to take forcible possession of the suit property from the appellant, he moved the Lower Court by filing an Obstruction Petition in REA No.84 of 2009 in REP No. 162 of 2005 in O.S. No. 206 of 1996, under Order 21 Rule 97 of Code of Civil Procedure.

3. Pending obstruction petition, the Appellate Court dismissed the appeal suit, holding that the remedy of the appellant is only to file a petition to implead himself as a party in the suit and seek to set aside the ex-parte decree. The learned counsel for the appellant herein submitted that the appellant had filed an Interlocutory Application in I.A. No. 92 of 2009 under Section 96 r/w Section 151 CPC, seeking leave to file an appeal suit against the respondents, as he was not a party before the Trial court. The said application was allowed by the learned District Judge on 18.12.2009, after coming to the conclusion that the appellant is prejudicially affected by the decree of the lower court. Thereafter, the Appeal Suit was numbered as A.S. No. 24 of 2009. Hence, the lower Appellate Court has no jurisdiction to reopen the order in I.A. and hold that the appeal is not maintainable.

4. Today, when the matter was taken up for hearing, the learned counsel for the appellant fairly conceded that in the light of the recent decision of this Court in the case of Suseela vs. Sourashtra Dharma Paripalana Committee, Kumbakonam reported in (2017) 6 MLJ 45, wherein it is held that a person who challenges the decree and claim title had to obstruct the execution of the decree and cannot file a fresh suit. Therefore, the appellant can only obstruct the decree as a third party, by obtaining leave and that the Execution Court has to decide his right and so the Second Appeal is liable to be

dismissed. However, prayed this Court to grant liberty to the appellant, to agitate the Obstruction Petition, filed under Order 21 Rule 97. The learned counsel for the respondents cannot have any objection, on the above said submission of the appellant.

5. In view of the above submission of the learned counsel for the parties and in the light of the decision cited supra, the Second Appeal is dismissed, at the stage of admission itself. However, liberty is granted to the appellant to agitate the case in the Obstruction Petition REA No.84 of 2009 in REP No. 162 of 2005 in O.S. No.206 of 1996. Consequently, the connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

avr
To

1. The Additional District Judge,
Krishnagiri.
2. The Sub Judge, Hosur.

+ 1 cc to MR. P.Mani, Advocate sr.67890

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