



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27.07.2017

Coram

The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

S.A(MD)No.321 of 2017

and

C.M.P(MD)No.6840 of 2017

James Joseph Baskar

.. Appellant/Appellant/Petitioner/
7th Respondent/3rd Party

Vs.

1.Ramanujam

2.Kannanraj

Loorthu Mary (deceased)

3.Arokiya Raj

4.Paul Rajini Santhi

5.Jabasthiri Karolin Sasikala

6.Rayar

7.Vimali Chirstiyana

.. Respondents 1 to 7/Respondents/
Respondents/3rd Party

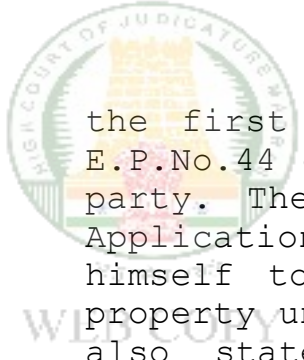
Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 18.02.2013 made in A.S.No.19 of 2010 on the file of the Principal Sub Court, Kumbakonam, confirming the Order and Decree, dated 17.08.2009 made in E.A.No.13 of 1999 in E.P.No.44 of 1997 in R.C.O.P.No.8 of 1986 on the file of the District Munsif cum Judicial Magistrate, Papanasam, Thanjavur District.

For Appellant : Mr.G.Gomathi Sankar

JUDGMENT

The above second appeal arises against the Judgment and Decree, dated 18.02.2013 passed in A.S.No.19 of 2010, on the file of the Principal Sub Court, Kumbakonam, confirming the Order and Decree, dated 17.08.2009 passed in E.A.No.13 of 1999 in E.P.No.44 of 1997 in R.C.O.P.No.8 of 1986, on the file of the District Munsif cum Judicial Magistrate, Papanasam, Thanjavur District.

2.The appellant is the petitioner in Section 47 C.P.C., application. There was a proceedings in R.C.O.P.No.8 of 1986, on the file of the Rent Controller cum District Munsif, Valangaiman for eviction by the landlord G.R.Ramanujam, who is the first respondent herein. The proceedings went up to this Honourable Court and eviction was ordered. Pursuant to the order of eviction,



the first respondent herein had filed an Execution Petition in E.P.No.44 of 1997, wherein the father of the appellant was also a party. Thereafter, the appellant herein had filed an Execution Application in E.A.No.13 of 1999 under Section 47 C.P.C., claiming himself to be a third party. He also claimed that he got the property under a Will executed by his maternal grandfather. He has also stated that the land belonged to the Government. His contention is that he claims the property under his father, who was a party to the proceedings and he has not claimed adverse possession. As he claimed independently under the Will as an owner of the property, petition under Section 47 C.P.C., was filed. The said Execution Application was contested by the first respondent stating that the appellant's father was a sub-tenant and that there was no Will executed by Rayar Servai, as alleged in the petition.

3.Both the Courts below have concurrently held against the appellant and dismissed the application. Aggrieved by the same, the above second appeal has been filed.

4.Admittedly, the parents of the appellant have been party to the Rent Control Proceedings. The appellant is claiming right under Will alleged to have been executed by one Rayar Servai.

5.A perusal of the records would show that the said Rayar Servai has been examined as R.W.2 in the Rent Control Proceedings and nothing has been elicited from him about the relationship between the parties or about his right over the property. Section 47 C.P.C., postulates that all questions arising between parties to the suit in which decree was passed or their representatives and relating to the execution discharge or satisfaction of the decree shall be determined by the executing Court and not by a separate suit. When the question of ownership has been raised by the party before the original proceedings, he cannot be allowed to agitate the same at the Execution stage. It is also settled principle that the Executing Court cannot go beyond the decree. As stated earlier, the parents of the appellant have been made as a party to the Rent Control Proceedings and the factum of ownership had been decided therein, though the appellant claims to have independent right and not claiming under his parents, the same cannot be decided here, as the Judgment in the Rent Control Proceedings are binding on him. As there is no question of law arising for consideration, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/



To

1. The Principal Sub Judge,
Kumbakonam.

2. The District Munsif cum Judicial Magistrate,
Papanasam, Thanjavur District.

3. The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.GOMATHI SHANKAR, Advocate, SR No. 68055.

PS

AE/KKR/SAR4/18.08.2017/3P/5C

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