

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 27.04.2017
CORAM

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.S.A. (MD) No.16 of 2015
and
M.P. (MD) Nos.1 and 2 of 2015

C.Jeya Surya Mallika

... Appellant

Vs.

1.C.Thiburtius
2.Maria Raja Retnam
3.C.Ida
4.C.Grand
5.Ralfan

... Respondents

Appeal filed under Order 43 Rule 1 r/w 100 of C.P.C, against the judgement and decree in CMA.No.21 of 2007 on the file of the District Court, Kanyakumari Division at Nagercoil, dated 13.03.2015 confirming the judgement and decree in E.A.No.383 of 2003 in E.P.No.56 of 2002 in O.S.No.74 of 1997 on the file of Principal Sub Court, Nagercoil, dated 30.08.2007.

For Appellant	:	Mr.R.Manimaran
For Respondent 1	:	Mr.R.Nanda Kumar
For Respondents 2 to 5	:	No appearance

ORDER

The appellant who is a third party/objector filed an appeal in C.M.A.No.21 of 2007 stating that the decree in suit in O.S.No.74/1997 relating to the subject property is not binding on the appellant.

2.The first respondent had entered into an agreement of sale with the deceased Bala Chandra George along with the respondents 2 to 5. Since the deceased Balachandra George did not come forward to execute sale deed as per the agreement, the first respondent had filed O.S.No.74/1997 seeking specific performance. The said suit was decreed after contest on 13.12.2001. The first respondent had filed an Execution Petition in E.P.No.56 of 2002 seeking to execute the said decree. It is in the said Execution Petition, the appellant filed an application in E.A.No.383 of 2003 objecting to the execution of decree contending that the suit property originally belonging to Gabriel Nadar, who died leaving herself and the deceased Balachandra George as his legal heirs.



3.The appellant would further claim that she is entitled half share in the suit property and the decree obtained by the first respondent will not bind the appellant with reference to her share.

The Trial Court dismissed the E.A.No.383 of 2003 on 30.08.2007. The Appellant filed C.M.A.No.21 of 2007 before the District Court, Kanyakumari District, at Nagercoil.

4.The First Appellate Court dismissed the appeal in CMA.No.21 of 2007 on 13.03.2015. Challenging the same, the appellant has come forward with this second appeal.

5.It is seen from the records that the appellant had instituted a suit in O.S.No.574 of 2002 seeking to declare the settlement deed executed by Bala Chandra George in favour of his wife Maria Rajaretnam is not binding her, for partition and for separate possession of his half share in the suit property. After contest, the said suit for partition was dismissed. The trial Court found that the plaintiff has not established the fact that she is entitled half share in the suit property. It was further found that the settlement deed executed by Bala Chandra George in favour of his wife is valid. It was also held that the plaintiff in the said suit, namely, the appellant herein is not entitled to the relief of declaration that the settlement deed executed by the deceased by the Balachandra George in favour of his wife is not binding on her. The appellant took up the matter on appeal in A.S.No.15/2007. The said appeal was also dismissed on 19.09.2008 confirming the findings of trial Court. Not satisfied with that the appellant filed another suit in O.S.No.106 of 2010 for declaration that the decree in O.S.No.74 of 1997 is not valid and binding on her and again sought for partition. The said suit was also dismissed on the ground of res judicata. The said decree has also not been challenged. Thus, the decree in O.S.No.574 of 2002 as well as the decree in O.S.No.106 of 2010 have become final.

6.In the light of the specific findings in both the suits by the competent Civil Court that the appellant is not entitled to a share in the suit property, the dismissal of the execution application by the Executing Court cannot be faulted. Therefore, I do not see any substantial question of law to entertain this second appeal. Accordingly, the appeal is dismissed. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To

1. The District Judge,
Kanniyakumari at Nagarcoil.

2. The Principal Subordinate Court,
Nagarcoil.

+1cc to M/S. R.NANDAKUMAR, Advocate, SR.No.54745.

+1cc to M/S. R.MANIMARAN, Advocate, SR.No.54822.

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SDS/SV:MMS/SAR 2/15.06.2017/3P/5C