

THE HONOURABLE SRI JUSTICE RAJA ELANGO

SECOND APPEAL No.216 OF 2017

JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, is directed against the judgment and decree, dated 15.11.2016, in A.S.No.108 of 2015 on the file of the I Additional District Judge, Rajamahendravaram whereunder and whereby, the learned District Judge allowed the appeal filed by the third party claimant against the order and decree, dated 12.06.2015, in E.A.S.R.No.2711 of 2015 in E.P.No.3 of 2014 in O.S.No.870 of 2012 on the file of the I Additional Senior Civil Judge, Rajamahendravaram.

2. For better appreciation of facts, the parties will be hereinafter, referred to as they were arrayed before the trial Court in E.A.S.R.No.2711 of 2015 in E.P.No.3 of 2014 in O.S.No.870 of 2012.

3. Case of the petitioner, in brief, is that he is the third party claimant. Respondent No.1 is the decree holder and respondent No.2 is the judgment debtor in the Execution Petition. Respondent No.2 agreed to sell the petition schedule property to the petitioner for Rs.30 lakhs and he received Rs.13 lakhs as advance and executed a sale agreement, dated 18.11.2011, in his favour. At the time of entering into the agreement, respondent No.2 informed that the petition schedule property was under mortgage to Repco Home Finance, Rajahmundry and that the debt amount will be about Rs.17 lakhs and the petitioner shall discharge the same from the

balance sale consideration. As the schedule property is in the necessity of repair and considering the sale consideration of Rs.13 lakhs with the liability of the petitioner to discharge the debt to Repco Home Finance, respondent No.2, during February, 2012, delivered possession of the same to the petitioner. The petitioner spent more than Rs.4 lakhs for repairs. He learnt that an amount of Rs.17,14,032/- was due to Repco Home Finance as on 13.10.2011. Though he is ready to fulfill his obligation to obtain a registered sale deed, respondent No.2 postponed the same. The petitioner was constrained to pay Rs.30,000/- on 29.11.2012 and Rs.60,000/- on 30.03.2013 to Repco Home Finance, Rajahmundry towards the loan. Respondent No.2 failed to perform his part of contract. During May, 2013, when there was a move by Repco Home Finance to initiate the recovery proceedings, the petitioner realized that respondent No.2 is not bonafide in fulfilling the agreement. Then, he issued a notice, dated 10.06.2013, to respondent No.2 calling upon him to execute the sale deed. Respondent No.2 got it returned deliberately. Hence, the petitioner filed O.S.No.130 of 2013 for specific performance of agreement of sale against respondent No.2 and Repco Home Finance, Rajahmundry, which is pending on the file of I Additional District Court. The petitioner learnt that respondent No.1 is bringing the schedule property to sale in execution of the decree alleged to have been obtained from him against the respondent in O.S.No.870 of 2012 and the sale is fixed to 12.06.2015. There is every possibility for the petitioner to obtain a decree for specific performance in his favour. Respondent No.2 is not in possession and he has no saleable interest. The right of the petitioner would date back to the

agreement of sale. Respondent No.2 has no right, title or possession over the same. The petitioner is also entitled to protection under Section 53-A of the Transfer of Property Act. Hence, the attachment is liable to be raised.

4. Having heard the petitioner's counsel, the learned I Additional Senior Civil Judge, Rajamahendravaram, by virtue of the order, dated 12.06.2015, rejected E.A.S.R.No.2711 of 2015 with a finding that the claim of the petitioner is devoid of merits. Aggrieved by the same, the unsuccessful petitioner filed A.S.No.108 of 2015 on the file of the I Additional District Judge, Rajamahendravaram and the same was allowed setting aside the order and decree, dated 12.06.2015, in E.A.S.R.No.2711 of 2015 in E.P.No.3 of 2014 in O.S.No.870 of 2012 on the file of the I Additional Senior Civil Judge, Rajamahendravaram. Challenging the said judgment, respondent No.1/decree holder preferred this Second Appeal.

5. On proper appreciation of the entire evidence on record, the lower appellate Court reversed the order passed by the trial Court and directed the trial Court to number E.A.S.R.No.2711 of 2015 and dispose of the same. After arguing for sometime, learned counsel for the petitioner also confined his arguments only to the extent of directing the trial Court to number E.A.S.R.No.2711 of 2015 and dispose of the same within a stipulated period.

6. In the result, the Second Appeal is dismissed without costs by confirming the judgment and decree, dated 15.11.2016, in A.S.No.108 of 2015 on the file of the I Additional District Judge, Rajamahendravaram and the trial Court is directed to number

E.A.S.R.No.2711 of 2015 and dispose of the same in accordance with law, as expeditiously as possible, preferably, within a period of two (2) months from the date of receipt of a copy of this judgment.

7. Miscellaneous petitions pending, if any, in this Second Appeal shall stand closed.

JUSTICE RAJA ELANGO

06.04.2017
AMD



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