



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.08.2018
Pronounced on	27.09.2018

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Coram

The Honourable Ms.Justice P.T.ASHA

C.M.S.A.No.19 of 2007

and

M.P.No.1 of 2007

Ramalingam

...Appellant/Petitioner

Versus

1.Sundaram
2.M.Sabapathy (died)
3.Sudha
4.Suvi
5.Kanimozhi
6.Elanthirai
7.Elavenil
8.Karmughil

...Respondents

(RR3 to 8 brought on record as legal representatives of the deceased R2 viz., M.Sabapathy vide Court order dated 13.07.2018 made in C.M.P.No.10913 of 2018 to 10915 of 2018 in C.M.S.A.No.19 of 2007)

This Civil Miscellaneous Second Appeal is filed under Section 100 of C.P.C and Order XXI Rule 58(4) & Section 104(1) (1) r/w 100 C.P.C against the judgment and decree dated 31.03.2006 passed in C.M.A.No.7 of 2005 on the file of the Sub-Court, Madurantagam confirming the fair and decreetal order dated 30.07.2004 passed in E.A.No.73 of 2001 in E.P.No.144 of 1997 in O.S.No.68 of 1996 on the file of the District Munsif Court, Madurantakam.

For Appellant : Mr.K.Goviganesan

For Respondent - 1 : Mr.P.Mathivanan

Respondent - 2 : Died

Respondents - 3 to 8 : Not ready in notice



J U D G M E N T

This Civil Miscellaneous Second Appeal is filed challenging the judgment and decree passed in C.M.A.No.7 of 2005 dated 31.03.2006, in and by which the learned Sub Judge, Madurantakam has confirmed the fair and decreetal order passed by the learned District Munsif, Madurantakam in E.A.No.73 of 2001 in E.P.No.144 of 1997 in O.S.No.68 of 1996 dated 30.07.2004.

2. The proceedings arise from the decree obtained by the first respondent against the deceased second respondent herein in O.S.No.68 of 1996 on the file of the District Munsif Court, Madurantakam, in and by which the deceased second respondent had been directed to pay a sum of Rs.17,131/- together with interest and costs to the first respondent. The first respondent herein had initiated execution proceedings in E.P.No.144 of 1997 seeking attachment of the immovable properties of the deceased second respondent. While the said Execution Petition was pending, the appellant herein came forward with the impugned Interlocutory Application in E.A.No.73 of 2001.

3. The learned District Munsif, Madurantakam was also pleased to pass an order of attachment. The appellant herein had filed the impugned Application invoking the provisions of Order 21 Rule 58 and Section 151 of C.P.C to raise the attachment, stay the execution of the decree till adjudication of the claim of the appellant with reference to the title and possession.

4. The appellant is the brother of the deceased second respondent. It was the case of the appellant that he was a co-sharer in respect of the suit property along with the deceased second respondent and another brother, Kandhasamy. It was his specific case that no division of the properties had taken place amongst the brothers and therefore, the Execution Petition seeking attachment of the immovable properties of the deceased second respondent with reference to the entire property including the share of the appellant was erroneous.

5. The first respondent herein had filed the counter affidavit inter alia contending that appellant has come forward with a totally false case inasmuch as there is already a partition between the appellant and his brothers on 10.06.1976 in which the property which is now the subject matter of the execution proceedings had been allotted to the appellant. Thereafter, the appellant had sold the said property to the deceased second respondent. The first respondent therefore contended that since the appellant has no right, title or interest over the property the Application filed by appellant is



not maintainable.

6. The learned District Munsif, Madurantakam after a detailed enquiry dismissed the Application holding that the appellant had come to the Court with certain false allegations and in fact condemned the conduct of the appellant. The learned Judge would also observe that the deceased second respondent's son has also filed a Claim Application in E.A.No.774 of 2000, while the Claim Application was pending, the appellant herein had filed a Claim Application in E.A.No.73 of 2001 which clearly shows that the only intention of the appellant is to delay the execution proceedings. Aggrieved by the aforesaid order, appellant is before this Court.

7. Heard Mr.K.Goviganesan, learned counsel appearing on behalf of the appellant and Mr.P.Mathivanan, learned counsel for the first respondent.

8. The learned counsel for the appellant would contend that towards a meagre decree amount of Rs.17,131/-, the first respondent was seeking to attach and sell a valuable property. He would also contend that the appellant is a co-sharer and the Chitta and Adangal had been filed to prove the said statement.

9. Mr.P.Mathivanan, learned counsel appearing on behalf of the first respondent would point out the judgment of the learned District Munsif, Madurandakam where the learned Judge has come down heavily upon the appellant for his swearing to a false affidavit. He would further submit that the learned counsel for the appellant has submitted that there was a partition in the appellant's family on 10.06.1976 where the appellant was allotted the property which is now the subject matter of execution and this property has been sold by him in the year 09.12.1991 to the deceased second respondent and therefore on the date of the filing of the Application, the appellant had no interest over the property.

10. Heard both sides. A perusal of the papers clearly shows that the appellant has come forward with a totally false statement that he continued to be the owner of the properties as a co-sharer suppressing the fact that he had transferred his right, title and interest to the deceased second respondent as early as in the year 1991. This Application came to be filed by the appellant ten years after the sale. The learned District Munsif, Madurantakam has rightly rejected the Application filed by the appellant and I find no infirmity in the said order. Even in the grounds of Appeal, the appellant has only contended that the learned Judge has not considered the fact that mutation had not taken place in the Revenue Records. The mutation of Revenue Records is only intended for showing possession and this



cannot override a Registered sale deed which has been executed by the appellant, in and by which the appellant had transferred all the right, title and interest that he had on the property in favour of the deceased second respondent.

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11. In the result, this Civil Miscellaneous Second Appeal is dismissed and the judgment and decree passed by the learned Sub Judge, Madurantakam in C.M.A.No.7 of 2005 dated 31.03.2006 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

mrr

To

1.The Subordinate Judge,
Madurantagam.

2.The District Munsif Court,
Madurantakam.

+1cc to Mr.K.Govi Gnesan, Advocate SR.No.67253

C.M.S.A.No.19 of 2007

CSI (CO)

GMV (26/10/2018)