

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.M.S.A. No.22 of 2006

Raju Gounder ... Appellant /1st Respondent

vs

1.Annamalai ...1st Respondent/Petitioner

2.Kuppammal ...2nd Respondent/2nd Respondent

Appeal filed under Order 21, Rule 58(4) read with Section 100 of C.P.C. against the order and decretal order dated 10.01.2006 made in C.M.A.No.5 of 2001 on the file of the District Judge (Training), Tiruvannamalai, reversing the order and decretal order dated 23.7.1997 passed in E.A.No.476 of 1988 in E.P.No.45 of 1988 in O.S.No.688 of 1986 on the file of the Principal District Munsif, Tiruvannamalai.

For Appellant : Mr.R.Karthikeyan

JUDGMENT

This Civil Miscellaneous Second Appeal is directed against the order dated 10.01.2006 made in C.M.A.No.5 of 2001 on the file of the District Judge (Training), Tiruvannamalai, reversing the order and decretal order dated 23.7.1997 passed in E.A.No.476 of 1998 in E.P.No.45 of 1988 in O.S.No.688 of 1986.

2. The first respondent is the claimant; the appellant herein is the first respondent/deGREE-holder and the second respondent is the second respondent/judgment-debtor in E.A.No.476 of 1988 in E.P.No.45 of 1988 in O.S.No.688 of 1986 on the file of the Principal District Munsif Court, Tiruvannamalai.

3. The claimant Annamalai filed E.A.No.476 of 1988 under Order 21, Rule 58 CPC to set aside the attachment of the property mentioned in E.P.No.45 of 1988 contending that the property in the subject matter of the claim petition originally belonged to one Venkatachala Gounder and from Venkachala

Gounder, Pattammal purchased the same. The second respondent is the daughter of Pattammal. The claimant is the grand son of the second respondent, who was a minor had purchased the property on 18.8.1986 and was in possession and enjoyment of the same. After the demise of the husband of Kupammal, she was in illicit intimacy with one Arumugam, who is the brother of the Raju Gounder. Hence, there was a strained relationship between Kupammal and her son Adimoolam. The claimant came to know the filing of suit in O.S.No.688 of 1986 by Raju Gounder for the recovery of money due under the promissory note executed by the Pattammal and Kupammal in favour of Arumugam and Arumugam, who in turn made over the same in favour of Raju Gounder brother and attachment of the property. Some of the properties belonged to Kupammal were sold on 15.7.1986 in favour of Raju Gounder and on 28.7.1987, Kupammal sold some of the properties in favour of Lakshmana Gounder. According to the claimant, the pronote debts are all created and concocted and further, the attachment made on 11.4.1988 was not valid. Since the claimant is the absolute owner of the property, he filed the claim petition seeking to set aside the attachment.

4. Resisting the claim petition, appellant Raju Gounder filed counter stating that the claimant purchased the property on 18.8.1986 without consideration and the said sale deed is a created one. It is stated that on 1.8.1983, Pattammal and Kupammal jointly executed pronote and obtained loan of Rs.3,000/- for Adimoolam's marriage and on 7.6.1986, he had paid Rs.50/- and the same was endorsed. On 23.4.1986, Pattammal and Kupammal jointly borrowed a sum of Rs.4000/- from Arumugam. In order to cheat Raju Gounder, the claimant had created sale deed dated 18.8.1986 and immediately after the sale, on 21.8.1986, pre-notice was given and filed the suit in O.S.No.688 of 1986. According to Raju Gounder, Kupammal, the mother of Adimoolam was not having any illicit intimacy with Arumugam, the brother of Raju Gounder. Hence, the sale deed pleaded by the claimant is not valid one and prayed for dismissal of the claim petition.

5. Before the Executing Court, the father of the claimant viz., Adimoolam examined himself as P.W.1 and two other witnesses viz., Perumal and Kailasa Mudaliyar were examined as P.W.2 and P.W.3 and Exs.P1 to P6 were marked. Raju Gounder examined himself as R.W.1, however, no document was marked.

6. By an order dated 23.7.1999, the Executing Court, dismissed E.A.No.476 of 1988. Aggrieved by the same, the claimant had preferred C.M.A.No.5 of 2001. By the judgment dated 10.1.2006, the lower appellate Court viz., District Judge (Training)], Tiruvannamalai allowed the appeal, thereby set aside the order of the Executing Court. Challenging the same, Raju Gounder has filed the present appeal.

7. By an order dated 13.7.2006, the appeal was admitted on the following substantial questions of law:

"1. Whether the lower appellate court is right in exercising its jurisdiction under the execution proceedings to decide the issue of genuinity of the promissory note, which formed the basis in the suit in O.S.No.688 of 1986?

2. Whether the lower appellate Court is right in raising suspicion over the promissory note upon which the suit was filed, when the defendants in the said suit did not challenge the decree in O.S.No.688 of 1986 by way of appeal?

3. Whether the lower appellate court is right in holding that the attachment of the suit property was made much later to the sale deed and hence, the debtor had no interest in the said property and hence, the sale in favour of the respondents does not become void?"

8. Assailing the order of the lower appellate Court, the learned counsel for the appellant submitted that the lower appellate Court committed error in reversing the well considered order of the Executing Court, which dismissed E.A.No.476 of 1988 and the order of the lower appellate Court is in total non-application of mind besides contrary to the settled principles of law. In fact, the lower appellate Court while setting aside the order of the Executing Court has not assigned any legally valid reasons.

9. The learned counsel further submitted that the finding of the lower appellate Court that on the date of attachment, Pattammal and Kuppammal had no title to the property is totally false when the finding of the Executing Court is that the said sale made by Pattammal is void and it is created only to cheat the creditors. He further submitted that the lower appellate Court committed grave error by deciding the validity of the promissory note.

10. Despite service of notice, first respondent/claimant has not entered appearance and the notice sent to the second respondent/judgment-debtor returned as vacated. Taking note of the fact that the appeal is of the year 2006, this Court is inclined to take up the appeal.

11. It appears that on 1.8.1983, Pattammal and the second respondent Kuppammal borrowed a sum of Rs.3,000/- from the appellant herein to meet the marriage expenses of Adimoolam and executed the promissory note. On 23.4.1986, both Pattammal and the second respondent borrowed a sum of Rs.4,000/- from the brother of Raju Gounder and executed the promissory note. Despite repeated demands, they have failed to repay the same. Therefore, Raju Gounder filed the suit in O.S.No.688 of 1986 and the said suit was decreed. In order to realise the decree amount, the Raju Gounder filed Execution Petition in E.P.No.45 of 1988 and sought attachment of properties and the properties have been attached.

12. It also appears that the claimant filed claim petition stating that he had purchased the property under Ex.P2-sale deed on 18.8.1986, whereas the property was attached on 11.4.1988.

13. According to the claimant, the pronote on which the suit was filed was created and concocted one. On 15.7.1986, Kuppammal sold the property in favour of the appellant under Ex.P3 and under Ex.P4, Kuppammal sold the property in favour of Arumugam. If really there was pronote executed by Kuppammal and Pattammal, the amount would have been deducted from the sale amount. According to the claimant, the said Arumugam, in collusion with Kuppammal created the pronote and filed the suit and got attachment of the property on 11.4.1988.

14. Thus, on the date of attachment, Pattammal has no title to the property. Further, in his evidence, R.W.1 deposed that Pattammal had received amount but in the suit, it is mentioned as both Pattammal and Kuppammal jointly executed pronote. The evidence of R.W.1 is in contradiction with the allegations in the suit. As rightly held by the lower appellate Court, if really there was pronote debts, the appellant herein would have demanded back the amount. The evidence adduced by the parties would reveal that Kuppammal was having illicit intimacy with one Arumugam and the said Arumugam is in collusion with Pattammal. The above said facts have not been clearly appreciated by the Executing Court while dismissing the claim petition. Having analysed and appreciation of the oral and documentary evidence, the lower appellate Court allowed the appeal, thereby setting aside the order of the Executing Court and resultantly, the claim petition filed by the first respondent herein came to be allowed. This Court is of the considered view that there is no infirmity and/or perversity in the order of the lower appellate Court and therefore, the present appeal is liable to be dismissed. Thus, the substantial questions of law framed are answered accordingly.

15. In the result, the Civil Miscellaneous Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The District Judge (Training),
Tiruvannamalai.

2.The Principal District Munsif,
Tiruvannamalai.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Vediappan, Advocate Sr.88662

C.M.S.A.No.22 of 2006

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srg 26/06/2019

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