

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.04.2018	Delivered on: 27.06.2018
-------------------------	--------------------------

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.2694 of 2011

Rathinavelu

.. Appellant/Plaintiff

-Vs-

1.V.Sivakumar
2.S.Padmaraj

3.The District Collector
Tiruchengode Road, Collectorate Campus
Namakkal District.

.. Respondents/Defendants

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code, against the fair and decretal orders dated 20.06.2011 on P.O.P.No.30/2010 on the file of the Principal District Judge, Namakkal.

For Appellant .. Mr.R.Subramanian
For R1 .. Mr.M.Devendran

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the fair and decretal order passed in P.O.P.No.30 2010 on the file of the Principal District Judge, Namakkal.

2. The POP.No.30 of 2010 was filed by the appellant/petitioner. The brief facts of the petition is, the petitioner filed a petition for granting permission to sue informa pauperise and for suitable orders. The petitioner in his affidavit has stated that, he has filed the suit for a decree to set aside the sale deed executed by the second respondent in favour of the first respondent as void abinitio, fraudulent and collusive document and also prayed for a decree for damages sustained by the appellant/petitioner on the fraud and collusion played by abusing the Power of Attorney dated 23.12.2008 and also for decree for permanent injunction restraining the respondents from interfering with his possession and enjoyment of the property and restraining the respondent from encumbering or creating any documents in respect of the

suit property. The petitioner in the said petition has stated that he has filed the suit to set aside the sale deed and also claiming damages sustained due to the fraudulent collusion with the second respondent. It is the averment made by the petitioner for valuing the suit for a sum of Rs.4,75,000/- which is the sale consideration and also for claiming damages of sum of Rs.25,00,000/-, he has to pay a Court fee of Rs.2,23,277/- for which, he has no means to pay the same. Hence, he has filed POP seeking permission to file the suit as informa pauperise.

3. The respondent in the petition has filed his counter stating that petitioner is employed as Document Writer by profession and he is earning a sum of Rs.10,000/- per month and the petitioner has also a sum of Rs.16,950/- in his account in Tamil Nadu Merchantile Bank and further has a property, which he has sold for Rs.4,75,000/- and he is having two tiled houses worth about Rs.5 lakhs and he is also getting monthly rent. Hence, the Trial Court has to decide and declare, whether the petitioner has to be declared as pauper.

4. The Trial Court after observing the evidence let in by both parties has given a finding by observing the fact that a Document Writer may get a sum of Rs.200/- to 300/- per day and also if the property which is in his possession worth of Rs.4,75,000/- is alienated the petitioner has means to pay the court fee, hence, dismissed the petition which was filed for declaring him as an indigent person.

5. Aggrieved against the order of dismissal, the petitioner has preferred this Civil Miscellaneous Appeal, on the ground that the lower Court ought to have seen that the petitioner has no means to pay the Court fees of Rs.2,23,277/-. The oral evidence and bonafide contention of the petitioner was not considered and the contention that the sale deed is oner was not considered and the contention of the case is that the sale deed is fraudulent and is not supported by consideration was not noted by the Trial Court. The report of the Government is also not sought by the Trial Court and the order passed by the Court below is in violation of the provisions of Order XXXIII of CPC. On perusal of the records, it is observed that the petitioner herein has filed the suit seeking relief of setting aside the fraudulent, collusive and void abinitio documents executed by the second respondent/second defendant in favour of the first respondent/first defendant under the Document No.442/2009 dated 23.03.2009 and also claiming damages sustained by him in the fraudulent sale transaction. The 1st and 2nd respondents/ 1st and 2nd defendants on misusing the Power of Attorney deed dated 23.12.2008 under the Document No.99/2008 on misrepresentation acted against the interest of this petitioner, who is the plaintiff, with respect to the suit property. Hence, the

petitioner has stated that as argued, he has not derived any benefit and the power agent has acted against the interest of this petitioner and the 2nd respondent/2nd defendant and has not acted to safeguard the interest of the petitioner/plaintiff and acted against the interest by misusing the Power of Attorney deed dated 23.12.2008.

6. On the side of the respondent, it is argued that the petitioner claiming that the second respondent/second defendant acted against the interest of this appellant/petitioner and executed the sale deed in favour of the first respondent/first defendant for a sale consideration of Rs.4,75,000/- without the petitioner/appellant consent is untenable. It is also the argument of the appellant that the second defendant never paid the sale consideration of the said sum of Rs.4,75,000/- to this appellant/petitioner. It is further argued that once, he has not derived any benefit and the sale consideration was never paid to him, he has no other remedy than to approach the Court for setting aside the fraudulent collusive sale by the first respondent and for having misused the Power of Attorney against the interest of this petitioner. It is also observed that, when there was a reference made by the respondent that there are two other houses in his possession and he is receiving a monthly rent from the same, he cannot be declared as indigent person to sue the suit.

7. But there was no document filed by the respondent for the said fact of the petitioner owning two other houses. When the argument of the appellant/petitioner is that when the sale consideration is not paid to him and relief sought by him is also one for setting aside the fraudulent sale and connected relief sought for is that he has no sufficient means to pay the Court fee.

8. On the side of the respondent, it is argued that, when the grievances of the petitioner is seeking relief of setting aside the sale deed executed by the second respondent in favour of the first defendant, which is collusive document and the other relief sought by the petitioner is for damages sustained by him. The abuse of the Power of Attorney deed dated 23.12.2008 and the sale is dated 23.03.2009 and the damages claimed by the petitioner at Rs.25,00,000/- is baseless, when the sale consideration itself is Rs.4,75,000/-. It is the argument of the respondent that the petitioner has not approached this Court with clean hands by seeking such a relief of damages, which is very huge to compare with the sale consideration amount and if the period between the date of execution of Power of Attorney deed and the sale deed is noted, the very intention of the petitioner in claiming such a huge amount as damages would prove the ill Will of the petitioner.

9. From the said argument and also on perusal of records, it is proved that the claim of damages at Rs.25,00,000/- is something abnormal and not based on any fact or any relevant documents. For the said argument, the petitioner/appellant also observed the same and prayed for considering the relief to the extent of setting aside the sale deed and he has to be permitted to sue the suit as indigent person. The respondent has also argued that, if the intention of the petitioner is only to set aside the sale deed as fraudulent and collusive one and for seeking such a relief, the appellant can very well be considered but regarding other relief of claiming damages at Rs.25,00,000/-, the petition has to be dismissed.

10. Hence, in view of the memo withdrawing the relief of claiming damages at Rs.25,00,000/-, the Civil Miscellaneous Appeal is allowed. No costs. The memo filed by the appellant shall form part of the record.

Enclosed : Xerox copy of Memo dated 10/04/2018 attached.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

dna

To

1) Principal District Judge, Namakkal.

2) The Section Officer, V.R. Section, High Court, Madras - 104.

+1cc to Mr.M.Devendran, Advocate SR.No.41061

+1cc to Mr.R.Vijayakumar, Advocate SR.No.41072

+1cc to Mr.R.Subramanian, Advocate SR.No.42101

C.M.A. No.2694 of 2011

GMV (25/09/2018)