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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2018

(Reserved on 27.07.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.24 of 2018

and

CMP(MD)No.307 of 2018

V.Chitravelu

... Appellant/1st Respondent/Petitioner/
Plaintiff

vs.

1) P.G.Sankaranarayanan ... 1st Respondent/Petitioner

2) P.G.Karthikeyan ... 2nd Respondent/2nd Respondent/Respondent/
Defendant

3) The State Bank of India,
Neruji Nagar, Dindigul,
Through its Branch Manager. ... 3rd Respondent

(R3 impleaded vide court order dated 22.06.18 made in CMP.5224/18)

Appeal filed under Order XXI Rule 58 r/w Section 103 of the Civil Procedure Code, against the fair and decreetal order dated 24.11.2017 passed in I.A.No.723 of 2017 in I.A.No.108 of 2017 in O.S.No.19 of 2017 on the file of the V Additional District Judge at Madurai.

For Appellant	: Mrs.P.Jessi Jeeva Priya
For R1	: Mr.S.Natesh Raja
For R3	: Mr.H.Thayumanaswamy
For R2	: Unclaimed

JUDGMENT

This appeal has been filed against the fair and decreetal order dated 24.11.2017 passed in I.A.No.723 of 2017 in I.A.No.108 of 2017 in O.S.No.19 of 2017 on the file of the V Additional District Judge at Madurai.

2.The appellant is the plaintiff in O.S.No.19 of 2017 on the file of the Vth Additional District Judge at Madurai. The appellant has filed the above suit against the 2nd respondent herein for recovery of a sum of Rs.20,22,240/- on the strength of the Demand Promissory Note, Cheque and by transferring funds through Bank accounts and the suit is pending before the Vth Additional District Judge, Madurai.



3. It is submitted that along with the plaint, the appellant filed I.A.No.108/2017 for attachment of the 2nd respondent/defendant's residential building at Chettinaickenpatti, Dindigul and the learned Vth Additional District Judge, Madurai, by order dated 20.03.2017, attached the entire property. The 1st respondent claimed half share in the attached property, has filed I.A.No.723/2017 under Order 38 Rules 8 and 10 and Section 151 CPC, to raise the order of attachment in respect of his half share in the attached property stating that the attached property was jointly purchased by him, his father K.P.Ganesan, 2nd respondent/defendant and his younger brother Karuppanna Raja in the name of the father K.P.Ganesan and after his death, the property devolved on the 1st respondent and other heirs. While so, the 1st respondent's mother executed a registered gift settlement deed dated 11.05.2012 settling her 1/12 share in favour of the 1st respondent, thereby, the 1st respondent became owner for half of the attached property. Karuppanna Raja also executed a registered gift settlement deed dated 19.05.2014 settling his 5/12 share in the property in favour of the 2nd respondent/defendant. Considering the facts and documents submitted along with the claim petition, the learned Vth Additional District Judge, by order dated 24.11.2017 was pleased to allow I.A.No.723/2017 and vacated the attachment in respect of the entire property, instead of vacating the attachment in respect of half share of the property, against which, the present appeal has been filed by the appellant/plaintiff.

4. Pending this appeal, the State Bank of India, Neruji Nagar, Dindigul, through its Branch Manager, has filed impleading application to implead themselves as 3rd respondent in this appeal and the same was ordered.

5. The only grievance of the appellant is, the learned Judge ought to have vacated the attachment only in respect of half share of the property instead of vacating attachment in respect of the entire property and during the interregnum period, the 3rd respondent/State Bank of India has brought the property for sale on 14.12.2017 against the borrowed amount of Rs.34,00,000/- obtained by the 1st respondent, his father K.P.Ganesan, his younger brother Karuppanna Raja and the 2nd respondent/defendant jointly, by mortgaging the entire property with the 3rd respondent. The rights of the parties over the property are to be established in O.S.No.19/2017. On the date of selling of the property by the State Bank of India, there was no attachment and the State Bank of India has sold the property for a sum of Rs.59,75,000/- and according to 1st respondent, the balance amount of Rs.27,73,126/- after adjusting for the loan amount, is the amount which belongs to him and the 2nd respondent, as both of them are having half share in the property. It is also stated that the 2nd respondent



has filed a suit for partition in respect of the property before the District Court, Dindigul, by impleading the State Bank of India as a party. According to the 1st respondent, since the property itself was sold, the partition suit has become infructuous as there is no corpus for partition. The balance sale proceeds alone has to be apportioned among the owners of the property and therefore, the 1st respondent would pray for directing the State Bank of India to disburse half of the amount to him by way of cheque and to deposit the remaining amount of Rs.13,86,563/- to the credit of O.S.No.19/2017 on the file of Vth Additional District Judge, Madurai. The respondents have also filed their counter and they have also raised various allegations.

6. In my considered opinion, in the present circumstances of the case, who is entitled to the balance amount can be decided only after the completion of the suit in O.S.No.19/2017 and the partition suit is also said to be pending.

7. Learned counsel for the 3rd respondent would state that the 3rd respondent is willing to deposit the balance amount of sale proceeds to the credit of O.S.No.19/2017.

8. Learned counsel for the appellant would state that the 3rd respondent may be directed to deposit the excess amount of sale proceeds to the credit of O.S.No.19 of 2017 and the parties will be entitled to the balance amount as per the outcome in the above suit.

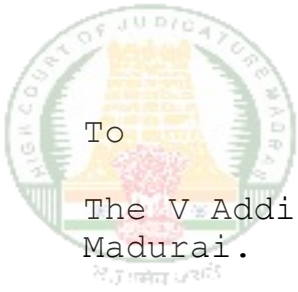
9. Admittedly, the respondents 1 and 2 are brothers having equal share in the property. The application in I.A.No.723/2017 has been filed by the 1st respondent to raise the attachment with regard to half share only, but the Court below has raised the attachment in full. So, in the interest of justice the 3rd respondent is directed to deposit the balance amount of Rs.27,73,126/- to the credit of O.S.No.19/2017 forthwith and the disbursement of the said amount shall be subject to the result of O.S.No.19 of 2017 and the partition suit said to be pending before the District Judge, Dindigul.

With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)



To

The V Additional District Judge,
Madurai.

WEB COPY

Copy to

- 1.The Branch Manager,
State Bank of India,
Neruji Nagar, Dindigul,
- 2 The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madruai.

+1cc to Mrs.P.Jessi Jeeva Priya, Advocate Sr.No.80878
+1cc to Mr.S.Natesh Raja, Advocate Sr.No.81056
+1cc to Mr.H.Thayumanaswamy, Advocate Sr.No.80993

BALA

VB/SKN/SAR3/25.09.2018/4P/8C

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