



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.285 of 2018

and

C.M.P. (MD) No.1260 of 2018

Arivalagan

... Petitioner

vs.

1.Duraisamy

2.Annamayil

3.Sitrarasan

4.Selvam

5.Krishnakumar

... Respondents

PRAYER: Petition filed under Section 115 of the Civil Procedure Code to set aside the order made in I.A.No.162 of 2017 in A.S.No.9 of 2017 on the file of the Additional District and Sessions Court, Periyakulam, Theni 10.11.2017.

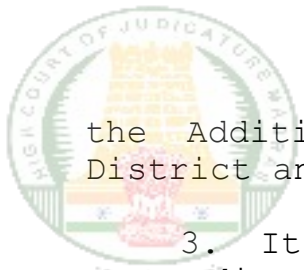
For Petitioner : Mr.B.Jeyakumar

For R.1/Caveator : Mr.A.Arumugam
for M/s.Ajmal Associates

ORDER

This Civil Revision Petition has been filed challenging the order passed by the Additional District and Sessions Court, Periyakulam, Theni in I.A.No.162 of 2017 in A.S.No.9 of 2017 dated 10.11.2017.

2. Among other things, the learned Counsel for the petitioner would submit that the petitioner herein, as plaintiff, has filed the suit in O.S.No.127 of 2009 before the Sub Court, Theni, against the first respondent herein, to execute a sale deed in his favour, based on a sale agreement dated 21.09.2005, in respect of property in Survey No.566/2B admeasuring to an extent of 1 acre 68.5 cents and Survey No.608/1 admeasuring to an extent of 3 acre 35 cents situated at Kadamalaikundu Village, Periyakulam, Theni District. The said suit was dismissed by the trial Court, by an order dated 09.01.2017, against which, the petitioner has preferred A.S.No.9 of 2017, before



the Additional District and Sessions Court, Periyakulam, Theni District and the same is pending.

3. It is the case of the petitioner that pending appeal proceedings, the first respondent attempted to transfer the title in respect of the suit property in favour of respondents 2 to 5. The learned Counsel for the petitioner would strongly contend that as per Transfer of Property Act, pending appeal proceedings, if a transaction is effected, the same will be bind by the result of the appeal proceedings and therefore, he has filed the interlocutory application in I.A.No.162 of 2017 to implead the respondents 2 to 5 herein as respondents in the appeal. But, the lower Appellate Court, without appreciating the facts and circumstances of the case, has erroneously dismissed the same and therefore, he prays for interference.

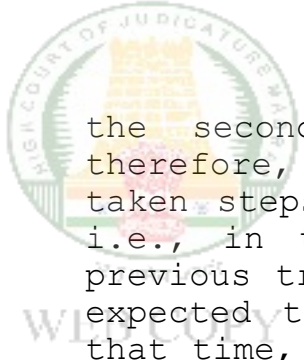
4. Narrating the events that took place, the learned Counsel for the first respondent would submit that the petitioner/plaintiff, by means of a sale agreement dated 21.09.2005, has instituted the suit, which was dismissed by the lower Court on 09.01.2017, as the sale agreement was found to be fake. He would further submit that in the counter filed by the first respondent before the lower Court, it is mentioned that on 15.06.2006, the first respondent has executed a deed in favour of the second respondent in respect of the suit property. Such being so, if the petitioner is really aggrieved, he should have been taken steps to implead the second respondent in the suit proceedings itself. Having failed to do so, the petitioner cannot claim the present relief right now, which was rightly held by the lower appellate Court and therefore, he prays for dismissal of the present revision petition.

5. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

6. Perusal of records would show that the suit was filed to execute a sale deed in favour of the petitioner, based on a sale agreement dated 21.09.2005. The alleged sale agreement was found to be forged by means of expert opinion and thereby, the suit was dismissed on 09.01.2017, against which, appeal came to be filed and the same is pending.

7. It is also seen that on 25.01.2017, the second respondent has executed a power deed in favour of the third respondent, based on which, the third respondent, on 04.07.2017, has made the impugned transaction, in respect of the suit properties, in favour of respondents 4 & 5. It is pertinent to note that the appeal was filed on 13.02.2017. In such a view of the matter, undoubtly, the impugned transaction took place during the pendency of the proceedings.

8. However, the first respondent, during the course of suit proceedings, in his counter dated 07.04.2010 before the trial Court, has categorically averred that he has executed a deed in favour of



the second respondent, in respect of the suit property and therefore, this Court is of the view that the petitioner should have taken steps to implead the second respondent at that time itself, i.e., in the suit proceedings itself. Having been aware of the previous transaction at an earlier point of time, the petitioner is expected to take steps to implead the party/second respondent at that time, as rightly held by the lower appellate Judge. Therefore, in my considered opinion, there is no infirmity or illegality in the impugned order and the same does not warrant any interference.

9. In result, this civil revision petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Additional District and Sessions Court,
Periyakulam,Theni District.

Gk

MV:SV-MMS:SAR1:28/03/2018/2P/2C

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