



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Friday, the Thirty First day of August Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN

CMP(MD) No.4660 of 2018

IN

SA No.2107 of 2002

Y.BALAKRISHNAN

... PETITIONER/THIRD PARTY

Vs

1 THIRUMALAIYANDI NADAR
2 MUTHATCHIAMMAL
3 S.ESSAKKI
4 PAULTHAI
5 S.CHELLAPPA

... RESPONDENTS/APPELLANTS

6 VELLATHAI
7 PALUKKA AMMAL
8 ROSY
9 MARIAPPAN

... RESPONDENTS/RESPONDENTS 1 TO 4

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to to implead the petitioner herein as party 5th Respondent in the above Second Appeal and thus render justice.

PRAYER IN SA No.2107 of 2002:

To prefer this Memorandum of Second Appeal against the Judgment and decree dated 11.04.2001 made in A.S.No.85 of 2000 on the file of the Principal Sub court, Tenkasi in confirming the Judgment and decree dated 23.10.2000 made in O.S.No.338 of 1994 on the file of the District Munsif Court, Tenkasi.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.D.SRINIVASARAGAVAN, Advocate for the petitioner and of MR.K.RAJKUMAR, Advocate for R1, the court made the following order:-

The plaintiffs in O.S.No.338 of 1994, who had filed the suit for declaration and permanent injunction are the appellants before this Court. The second appeal was filed against the concurrent judgment of the trial Court and the First Appellate Court whereby the suit and appeal filed by the plaintiff came to be dismissed.

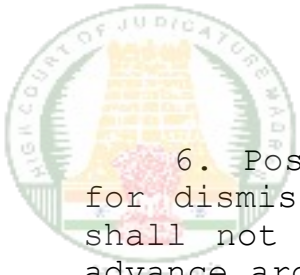


2. Pending the appeal, at the time of admission, this Court had granted interim injunction in C.M.P.[MD].No.18346 of 2002 on 20.12.2002. The said civil miscellaneous petition had been filed by the petitioners seeking an order of injunction restraining the respondents from disturbing the peaceful possession and enjoyment of the suit property including alienation to third parties.

3. This Court on consideration of the facts had granted injunction. The said order of injunction is in force. While that was the position, the respondent in the appeal had conveyed the suit property by a registered document on 08.02.2013 in favour of one-S.Marimuthu. This document was registered as document No488 of 2013, in the Office of Joint Sub-Registrar No.II, Tenkasi. Subsequently, the legal representatives of the said S.Marimuthu, had once again conveyed the same property in favour of the present applicant by a registered document in registered document No.3065 of 2017, in the office of the Joint Sub-Registrar No.II, Tenkasi on 09.10.2017.

4. After this purchase, this application has been filed seeking to implead the purchaser Mr.Y.Balakrishnan, who is a third party to the proceedings as the 5th respondent in the second appeal. In the affidavit filed in support of the application, the entire details of the second appeal had been narrated. It had also been specifically stated that pending disposal of the second appeal, the sole defendant had sold the property to S.Marimuthu and that after the death of the S.Marimuthu, his legal representatives had sold the property to the petitioner. It is therefore obvious that the petitioner had purchase the property knowing fully well that the second appeal is pending, and naturally further, that there is an injunction restraining the alienation. He is not a *bonafide* purchaser without notice of the lis.

5. Notice was directed to be served on the appellant and counter has been filed. It is stated that the sale cannot grant any right of title to the petitioner. It is also stated that the transactions are hit under Section 52 of the Transfer of Property Act. Section 52 of the Transfer of Property Act places an embargo on dealing with the property which is the subject matter of any litigation and if any party to a litigation wishes to deal with any property, they must get prior leave of the Court. In the present case there is no indication that either the respondents or the present petitioner herein had obtained leave before entering into this sale transaction. The petitioner had purchased the property knowing fully well that the second appeal is under the consideration of this Court. Further, learned counsel had also entered appearance on behalf of the respondents. The petitioner is a speculative purchaser. Consequently, there is no merit in the present petition and the petition is dismissed.



6. Post the second appeal under the caption "for arguments or for dismissal" on 12.09.2018. It is made clear, that adjournment shall not be granted to the learned counsel for the appellant to advance arguments.

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sd/-
31/08/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE PRINCIPAL SUBORDINATE JUDGE, TENKASI

2 THE DISTRICT MUNSIF, TENKASI

+1. C.C. to MR.D.SRINIVASARAGAVAN, Advocate SR.No.16678

ORDER
IN
CMP (MD) No.4660 of 2018
IN
SA No.2107 of 2002
Date :31/08/2018

PK/JC/SAR-1/10.09.2018 : 2P/4C