



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.S.A.No.21 of 2007 and
M.P.No.1 of 2007

K.C.Ramasamy

...Appellant

Vs.

1. Balaknath Textiles,
rep. By its Partner,
Radhakrishnan
11/84, Kumarapuri,
Chennai-600 016

2. M.Vijayalakshmi

Respondents

Civil Miscellaneous Second Appeal filed under Order 21 Rule 58 read with Section 100 of C.P.C., to set aside the Judgment and decree dated 05.04.2007 made in C.M.A.No.8 of 2006 on the file of the learned Principal District Judge, Erode reversing the Judgment and Decree dated 18.03.2005 made in E.A.No.494 of 2004 in E.P.No.124 of 1999 in O.S.No.253 of 1997 on the file of I Additional Sub Judge, Erode.

For Appellant : M/s.Zeenath Begum

For Respondents : Mr.N.Manokaran for R1
No appearance for R2

J U D G M E N T

This Civil Miscellaneous Second Appeal has been directed against the impugned decreetal order dated 05.04.2007 passed by the learned Principal District Judge, Erode in C.M.A.No.8 of 2006 reversing the Judgment and Decree dated 18.03.2005 made in E.A.No.494 of 2004 in E.P.No.124 of 1999 in O.S.No.253 of 1997 on the file of the I Additional Sub Judge, Erode.

2. This Court while admitting the present Civil Miscellaneous Second Appeal on 01.10.2007 has raised the following substantial questions of law for consideration:-

'(i) When a third party's agreement of sale is prior to the attachment obtained by the plaintiff



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against the third party's vendor, whether it will not prevail over the decree obtained by the plaintiff?

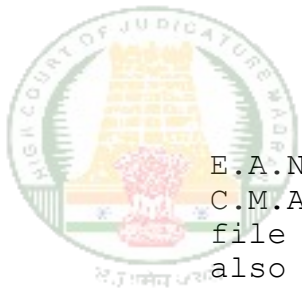
(ii) When that execution court's finding that the validity of the sale obtained by the appellant herein has not been disturbed, whether the lower Appellate Court is correct in holding that the sale has been made to defeat the rights of the creditor?'

3. Answering the substantial questions of law, the learned counsel appearing for the appellant would submit that the appellant registered a sale agreement dated 27.01.1997 with 2nd respondent, viz., M.Vijayalakshmi for purchasing the said suit property for a sum of Rs.1,00,000/-. However, a sum of Rs.75,000/- was paid by the appellant leaving only 1/3rd of sale amount to be paid. After finding that 2nd respondent is dodging, the appellant filed a suit in O.S.No.564 of 1997 on 05.11.1997 seeking a decree for specific performance of the sale agreement dated 27.01.1997 on the file of the learned II Additional Sub Judge, Erode. On contest, the suit was also decreed on 26.08.2003, against the 2nd Respondent.

4. The learned counsel for the appellant contended that in the meanwhile, within five months from the date of filing of the suit by the appellant / plaintiff, before the learned II Additional Sub Judge, Erode, the 1st Respondent, namely, Balaknath Textiles also filed a suit on 24.06.1997 in O.S.No.253 of 1997 for recovery of Rs.2,91,300/- on the file of Subordinate Court, Erode against 2nd respondent.

5. The learned counsel for the appellant takes a plea that the 1st respondent had also moved an application in I.A.No.476 of 1997 seeking attachment before Judgment. Accepting the claim made by the 1st respondent, the trial court was pleased to grant an attachment before Judgment on 11.08.1997 against 2nd respondent. Finally exparte decree was passed on 03.12.1997. Based on the decree coupled with the attachment before Judgment dated 11.08.1997, E.P.No.124 of 1999 was filed by the 1st respondent against the 2nd respondent. After coming to know that 1st respondent has proceeded against 2nd respondent, the civil suit filed by the appellant in O.S.No.564 of 1997 has become infructuous and E.A.No.494 of 2004 was also filed by the appellant.

6. The learned counsel for the appellant further submitted that the trial court accepting the case of the appellant that he has entered into an sale agreement on 27.01.1997, which is much prior to the order of attachment before judgment passed on 11.08.1997, has allowed the



E.A.No.494 of 2004 on 18.03.2005. Aggrieved thereby, C.M.A.No.8 of 2006 was filed by the 1st respondent on the file of learned Principal District Judge, Erode, which was also allowed on 05.04.2007.

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7. Added further, the learned counsel for the appellant contended that the finding of the execution court that the validity of the sale obtained by the appellant herein has not been disturbed, whether the lower appellate court is correct in holding that the sale has been made to defeat the rights of the creditor?.

8. In reply, Mr.Manokaran, learned counsel appearing for the 1st respondent / defendant defending the impugned judgment and decree passed by the learned Principal District judge, Erode contended that this appeal is liable to be rejected as it is fully devoid of any merits. The reason being is, when the appellant / plaintiff has claimed that there was a sale agreement entered between him and the 2nd respondent on 27.01.1997, it was neither registered nor recognised by any of the parties to the suit. When it was an unregistered document, it was created only for the purpose of supporting prayer in the civil suit seeking decree for specific performance. Therefore, the Execution Court allowed E.A.No.494 of 2004 citing a reason that sale agreement dated 27.1.1997 was much prior to the order of attachment before judgment dated 11.08.1997 and also the exparte decree passed against the 2nd respondent dated 03.12.1997 are wholly untenable and would not stand to the legal scrutiny. Therefore, the lower appellate court has rightly come to the conclusion that the alleged sale agreement dated 27.01.1997 although being prior to the order passed by the trial court granting attachment before judgment on 11.08.1997, the 1st respondent was also able to obtain the exparte decree on 03.12.1997, therefore, both the orders, viz., the order of attachment before judgment obtained by 1st respondent dated 11.08.1997 and the consequential decree dated 03.12.1997 were rightly passed by the competent civil court. The appellant / plaintiff cannot stake a claim on unregistered sale deed dated 27.01.1997.

9. Heard the learned counsel on either side and perused the documents available on record.

10. I fully agree with the submission of the learned counsel appearing for the 1st respondent, the reasons being are: (i) When there was only unregistered sale agreement dated 27.1.1997, the 1st respondent was able to file a suit for an amount of Rs.2,91,300/- during the pendency of the civil suit in O.S.No.253 of 1997, which was filed on 24.06.1997 and the same is much prior to the suit, viz., O.S.No.564 of 1997 filed by the appellant on 05.11.1997.



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(ii) the 1st Respondent was also able to obtain an order of attachment before Judgment on 11.08.1997 and consequently, the trial court was pleased to grant exparte decree on 03.12.1997. Therefore, the substantial questions of law are answered against the appellant.

In the result, the Civil Miscellaneous Appeal fails and the same stands dismissed. Consequently, the interim stay granted on 01.10.2007 in M.P.No.1 of 2007 shall stand automatically vacated. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssd
To

1. The Principal District Judge,
Erode
2. The I Additional Sub Judge,
Erode.

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

+lcc to Mr.N.Manokaran , Advocate SR.No. 52026
+lcc to M/s.Zeenath Begum , Advocate SR.No. 52085

C.M.S.A.No.21 of 2007

A.SK(29/08/2019)