

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.S.A.NO.3 OF 2009

K.Natarajan

... Appellant /
3rd party Obstructor

Vs.

1.K.Mani

K.Rangasamy Konar (Died)

.... Respondent No.1/
Decree Holder

2.R.Gopalakrishnan

3.R.Laxmanan

4.R.Mohanraj

5.Sulochana

6.Dhanalakshmi

7.Savithiri

8.Bakyalaxmi

.... Respondents 2 to 8/
Judgment Debtors

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 read with Order 43 Rule 1 of Code of Civil Procedure Code against the judgment and decree passed in A.S.No.60 of 2007 dated 15.11.2008 on the file of the 1st Additional District Judge, Coimbatore, confirming the fair and final order passed in E.A.No.155 of 2007 in E.P.No.127 of 2005 in O.S.No.153 of 2004 dated 12.04.2007 on the file of the II Additional Subordinate Judge, Coimbatore.

For Appellant

: Mr.T.R.Rajagopal

Senior Counsel for M/s.T.R.Rajaraman

For Respondent -1

: Mr.C.R.Prasanan

For Respondents 2-8:

Mr.C.Deivasigamani

J U D G M E N T

This Civil Miscellaneous Second Appeal is preferred against the judgment and decree passed in A.S.No.60 of 2007 dated 15.11.2008 by the learned I Additional District Judge, Coimbatore, confirming the fair and final order passed in E.A.No.155 of 2007 in E.P.No.127 of 2005 in O.S.No.153 of 2004

dated 12.04.2007 by the learned II Additional Subordinate Judge, Coimbatore.

2. The suit property originally belonged to one Ramakkal by way of registered sale deed dated 14.05.1937. She executed a WILL in favour of one K.Mani, who is the first respondent herein, on 16.01.1979. Aggrieved over the same, the first respondent's brother one Rangasamy filed a suit for partition in O.S.No.575 of 1980 before the District Munsif, Coimbatore, which was dismissed upholding the validity of the WILL executed in favour of the first respondent. The said judgment was confirmed by this Court in S.A.No.647 of 1987 on 26.02.2001. Thereafter, the first respondent filed a suit for recovery of possession in O.S.No.153 of 2004, which was decreed and ultimately, the decree was confirmed by this Court in S.A.No.1166 of 2006 on 08.10.2006.

3. During the pendency of the execution petition filed by the first respondent, the said Rangasamy filed another suit in O.S.No.756 of 2007 to declare that the right and title bequeathed in favour of the first respondent in the WILL dated 16.01.1979 executed by Ramakkal has extinguished and to cancel the judgment and decree dated 29.03.1983 passed in O.S.No.575 of 1980 by the District Munsif, Coimbatore as null and void and to cancel the judgment and decree dated 28.01.2005 passed in O.S.No.153 of 2004 by the Subordinate Court, Coimbatore as null and void. In the said suit, the said Rangasamy filed an application for interim injunction which was dismissed and thereafter, he filed an appeal which was also dismissed. The Civil Revision Petition filed by the appellant against the orders passed by the Lower Appellate Court was also dismissed with exemplary cost.

4. While the matter stood thus, the appellant who is none other than the son-in-law of the said Rangasamy filed an obstruction petition under Order 21 Rule 97 of Code of Civil Procedure in the execution petition filed by the first respondent on the ground that he is the owner of the property. It is stated that one Viswanathakurukkal obtained a decree in his favour against Ramakkal in a suit for mortgage. He made over the decree in favour of Angammal and the Angammal became the title holder. The said Angammal, on 04.04.1996, had assigned her rights through an assignment deed in favour of the appellant, who is none other than her son-in-law for a sum of Rs.25,000/-. On the basis of the assignment deed, the appellant claimed title and filed the above obstruction petition under Order 21 Rule 97 of the Code of Civil Procedure. The obstructor examined was P.W.1. The obstructor viz., P.W.1 in his evidence has categorically admits that he is a resident of Machinailarnpalayam, Eachanari, Coimbatore and that he does not

have any proof for his residence, such as family ration card, electoral identity card etc. Further, he would admit that the auction of the suit property was came to his knowledge only through his father-in-law, who is none other than the above said Rangasamy. More importantly, the obstructor would admit that he was not aware of the assignment deed executed by the said Angammal. He is not aware of the transactions between his father-in-law and the first respondent, and also other material details. From the admission of the appellant, it is categorically made clear that the entire case, based on the assignment deed, had fallen to ground and all the documents filed by him proved to have been fabricated for the purpose of defeating the rights of the first respondent.

5. The questions of law framed in the memorandum of grounds of appeal does not raise any legal issue, but are only factual issues. In view of the admission that he was not aware of the very assignment based on which he rests his case, I do not find any merit in this appeal warranting interference of the judgments of the Courts below.

6. In fine, the Civil Miscellaneous Second Appeal merits no consideration and accordingly, stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

TK

To

1. The 1 Additional District Judge
Coimbatore.
2. The II Additional Subordinate Judge
Coimbatore.
3. The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.T.R.Rajaraman, Advocate, S.R.No.16342

+1 cc to Mr.C.R.Prasanan, Advocate, S.R.No.16412

C.M.S.A.NO.3 OF 2009

RV (CO)
SSM(23/05/2019)