

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.35 of 2013

and

M.P.No.1 of 2013

P.Sadasivam

....Appellant/Claimant
(IIIrd party)

Vs.

1.S.R.Palanisamy

2.S.R.Duraisamy

.... Respondents/Respondents

Civil Miscellaneous Second Appeal filed under Order 21 Rule 58 r/w Section 100 of Cr.P.C., praying to set aside the judgment and decree dated 05.03.2013 passed in A.S.No.6/2013 on the file of the Principal District and Sessions Judge, Erode confirming the order dated 06.10.2012 passed in E.A.No.19/2010 in E.P.No.49/2010 in O.S.No.152/2002 on the file of the Sub-ordinate Court, Sathyamangalam, Erode District.

For Appellant : Mr.I.C.Vasudevan

For Respondents : Mr.J.Prakasam (for R.1)

No appearance for R.2

JUDGEMENT

The present Civil Miscellaneous Second Appeal is being filed by the appellant challenging the order dated 05.03.2013 made in A.S.No.6/2013 on the file of the Principal District and Sessions Judge, Erode confirming the order dated 06.10.2012 passed in E.A.No.19/2010 in E.P.No.49/2010 in O.S.No.152/2002 on the file of the Sub-ordinate Court, Sathyamangalam, Erode District by raising various grounds.

2.The first respondent had filed a suit in O.S.No.152/2002 for recovery of money and the same was decreed against the second respondent and the second respondent has

filed E.P.No.90/2008 to bring the suit schedule property for sale in Court auction on 01.10.2009. The appellant herein had purchased the said property from the second respondent and the sale was bonafide one and he has paid the valuable sale consideration and he is not aware of any of the transactions between the first and second respondent and any dues by the second respondent to the first respondent. The appellant herein came to know about the said execution proceedings only in the second week of August, 2009 and he immediately consulted his counsel and collected all the materials and details and filed a petition for adjudicating the said claim. The said judge had passed an order in E.A.No.19/2010 in E.P.No.49/2010 and dismissed the same on 06.10.2012. Hence he filed an appeal before the Appellate Court/Principal District and Sessions Judge, Erode.

3.The first respondent had filed a counter before the said Court denying the entire allegations of the appellant and stated that the appellant is a Benami to the Judgment Debtor. When the first respondent did not appear before the Court, the said suit was dismissed for default. In the said suit, an order of attachment was passed in I.A.No.555 of 2002 on the next day of the said dismissal. The same was communicated to the Office of the Registrar and the second respondent with fraudulent intention had executed a sale deed in favour of the appellant herein for the said suit schedule property. Immediately on coming to know about the fraudulent act committed by the second respondent, the first respondent had filed a petition for restoring the suit and the same was allowed. When the main suit was allowed, the interim orders granted therein was also revived. Hence, the claim made by the appellant herein was not accepted and the petition was dismissed.

4.Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondents.

5.On perusing the materials placed on record, this Court is not inclined to accept the case of the appellant herein that the suit was dismissed for default on 07.04.2004 and he purchased the property on 08.04.2004 and there was no attachment existed at the time when the property was purchased. Only after verifying encumbrances, he has purchased the property for valuable sale consideration and the lower Court has not considered the said facts and dismissed the said petition erroneously. It is seen from the said order of the lower Court that an order of interim attachment was passed on 19.09.2003 in the suit in O.S.No.152/2002 and when the suit was dismissed for default on 07.04.2004 and on 08.04.2004, the property has been purchased by the appellant/claimant.

6.It is further seen that there was no consideration passed between the parties as there is no evidence to prove the same and no encumbrance certificate has been applied by the appellant for the schedule property. Immediately after the suit is restored, the interim attachment also got revived from 1993 and the same continued and the claim of the appellant that he was the bonafide purchaser of the land was not proved by the said person beyond doubt. That apart, earlier a legal notice was issued by the first respondent informing that any agreement entered into in respect of the suit schedule property for purchase, the above said agreement is void since, the property is already attached by the Court. The said legal notice was issued by the first respondent to the appellant herein as early as on 21.02.2004 and an acknowledgment card was also filed before this Court to show that the appellant herein have received the said notice and had knowledge of the attachment.

7.It is also further noted that the appellant's wife had also entered into an agreement with the second respondent in respect of the same schedule mentioned property i.e., suit schedule property. The first respondent had already sent a legal notice on 21.02.2004. Pending the said suit proceedings, the appellant and his wife are aware that the attachment of property was ordered and the said suit is pending. The contention of the appellant that he did not have any knowledge is false and the same has to be rejected. The suit was dismissed for default on 07.04.2008 for non appearance of the plaintiff. Immediately, the information regarding the dismissal of suit was informed to the Registrar and the very next day suit property has been sold to the appellant herein also creates a doubt. The said transaction between the appellant and the second respondent for a sale consideration of Rs.4,75,000/- was also not known to the appellant who was unable to depose when examined in Court, what was the amount paid as sale consideration to the said property. When appellants are very much aware and had knowledge that the suit property has been attached by the Court and without even verifying the actual facts, immediately purchasing the property on the very next day of the dismissal of suit for default, raises a doubt in the mind of this Court as the said transaction is only a fraudulent transaction and there is no valid reason stated by the appellant for doing such act it is only executed for denying the rights of the respondent.

8.In view of all the above facts, this Court is not inclined to accept the case of the appellant and the same deserves to be dismissed and the orders passed by the Lower Appellate Court in A.S.No.6/2013 dated 05.03.2013, on the file of the Principal District and Sessions Judge, Erode is confirmed. In the result, the Civil Miscellaneous Second

Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mrm

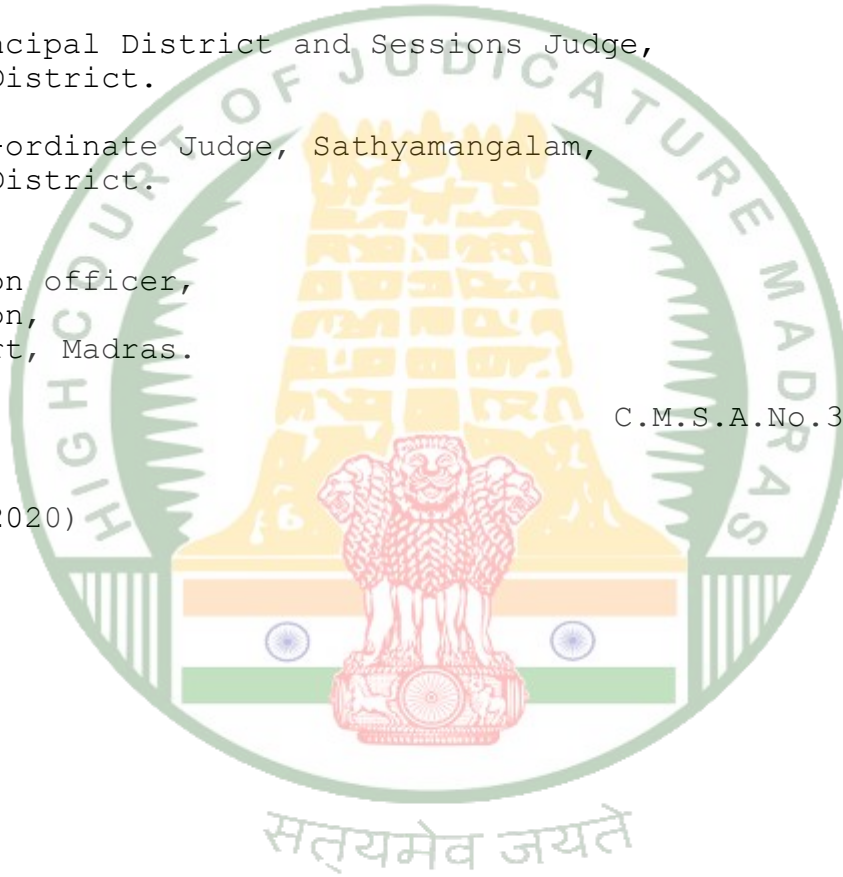
To

- 1.The Principal District and Sessions Judge,
Erode District.
- 2.The Sub-ordinate Judge, Sathyamangalam,
Erode District.

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The Section officer,
VR Section,
High Court, Madras.

C.M.S.A.No.35 of 2013

SAI (CO)
CB(24/01/2020)



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