

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.3351 OF 2017

and

C.M.P.NOS.21318 OF 2017 & 4851 OF 2018

1. M.Ravichandran
2. M.Saravanakumar
3. Suganya
4. Pavithra Appellants

Vs.

1. Subbulakshmi
2. Chinna Muthusamy Gounder ... Respondents
(Appellants 1 to 4 recorded as LRs of the deceased 2nd respondent viz Chinna Muthusamy Gounder vide memo dated 08.02.2018 court order dated 09.02.2018 in CMANO.3351 OF 2017)

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C. praying to set aside the fair and decreetal orders dated 21.09.2017 in E.A.No.39 of 2017 in E.P.No.41 of 2011 in O.S.No.261 of 1999 on the file of the III Additional District and Sessions Judge's Court, Gobichettipalayam.

For Appellants : Mrs.S.Dhanalakshmi
For Respondents : Mr.Tranquebar Dorai Vasu

O R D E R

This appeal is filed by the appellants seeking to set aside the fair and decreetal orders dated 21.09.2017 in E.A.No.39 of 2017 in E.P.No.41 of 2011 in O.S.No.261 of 1999 on the file of the III Additional District and Sessions Judge's Court, Gobichettipalayam.

2. Originally, a suit for specific performance in O.S.261 of 1999 was filed by the first respondent against the father of appellants 1 and 2 in the year 1999. The suit for Specific performance was based on sale agreement dated 20.05.1996. The Trial Court has held that the sale agreement was valid and thereby decreed the suit on 31.12.2001. Against the order passed by the Trial Court, an appeal was preferred by the appellant's father and the same was

dismissed on 01.04.2010 by this Court confirming the decree passed by the Trial Court. Thereafter, it appears that the appellants entered into a partition deed and filed a suit against their own father for injunction restraining him from alienating the properties and that suit was decreed on 31.12.2001.

3. In pursuance of decree dated 31.12.2001, the respondent / decree holder filed an execution petition in E.P.No.41/2011 in O.S.No.261/1999. The Execution Court passed orders to execute the sale deed and to deliver the possession. In the meanwhile, the appellants filed a petition in E.A.No.13 of 2012 under Section 47 of C.P.C and the same was dismissed, against which they preferred the Civil Revision Petition in C.R.P.(N.P.D) No.1507 of 2014.

4. This Court in C.R.P.(N.P.D) No.1507 of 2014 dated 25.11.2016 held that the petition under Section 47 filed by the petitioners / 3rd party is not maintainable and however observed that it is open to the petitioners to file appropriate petition before appropriate Court for appropriate relief at appropriate time. Thereafter, the appellants approached the execution Court by way of execution application under Order 21 Rule 97 of C.P.C. The execution Court after considering the merits of the case, dismissed the same. Aggrieved over the same, the appellants are before this Court.

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5. It is the contention of the learned counsel for the appellants that the sale deed itself is an unregistered document and by playing fraud, the decree was obtained. The appellants were minors at the time of institution of the suit and therefore this decree is not valid and binding and it is liable to set aside. One more opportunity to file an appropriate application and contest the case before the Execution Court to protect their rights over the property.

6. I have considered the submissions. Admittedly, the suit was filed in the year 1999 on the basis of sale agreement. The said sale agreement was found to be valid as held by the Trial Court and it was confirmed by the appellate Court in A.S.No.75 of 2002 on 01.04.2010 as well. The decree has become final as there was no appeal preferred against the same by the appellants or their father. The decree holder namely the respondent has filed an execution petition for execution of the sale deed as well as for delivery of possession. Now that the petition under Order 21 Rule 97 came to be filed by the appellants.

7. It is an admitted fact that the property in respect of which the decree for specific performance was passed is a self acquired property of the father of the appellants. In so far as, the petitioners are concerned, they are not third parties and they do not have any right or any semblance of right over the property.

8. It is seen that pursuant to the decree, without any independent right over the property, the appellants have preferred the application under Order 21 Rule 97. The Execution Court has found that the appellants who have no right over the property and who have not shown any entitlement to resist delivery of possession, have no locus standi to file and maintain the application, dismissed the same on merits.

9. When the property is a self acquired property and present appellants can claim right only through their father the decree passed in the matter will bind the appellants also. Hence this Court finds that the appellants have no independent right or title or entitlement over the property. Without exposing any right or title over the property, the application under Order 21 Rule 97 is not maintainable. In so far as the appellants are concerned, they are not third parties and the decree passed against their father is binding on them also. As they have not taken any steps to implead themselves in the suit to contest the same, now they cannot agitate the issue indirectly. In such circumstances, I do not find any merit in the appeal. The findings of execution Court is valid and does not require any interference. Accordingly, Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bkn / msr

To,
The III Additional District and Sessions Judge's Court,
Gobichettipalayam.

Copy to
The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.R.T.Doraiasamy, Advocate SR.No. 23054
+1cc to Mr.K.Rajendra prasad , Advocate SR.No. 22924

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