

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.06.2019

CORAM
THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.Nos.2611 and 2612 of 2018
and C.M.P.No.19710 of 2018

Sornambal

..Appellant
[in both CMAs]

versus

1.P.Kannagi
2.Jayachandran
3.Sathishkumar
4.Sadasivam
5.M.Palanisamy
6.M.Velusamy
7.M.Manoharan @ Krishnamoorthy
8.Saraswathi

..Respondents
[in both CMAs]

Common Prayer: Civil Miscellaneous Appeals filed under Order 43 Rule 1 of Code of Civil Procedure, against the common judgment and decree dated 09.08.2018 made in I.A.Nos.149 and 150 of 2018 in C.M.A.No.2 of 2017 on the file of the Second Additional District Court, Erode, respectively.

For Appellant : Mr.N.Manokaran
[in both CMAs]

For Respondent No.1 : Mr.S.Kaithamalai Kumaran
[in both CMAs]

For Respondent Nos.2 to 8 : No Appearance
[in both CMAs]

C O M M O N J U D G M E N T

These two Civil Miscellaneous Appeals have been filed by one Sornambal, wife of Duraisamy, to set aside the fair and decreetal order dated 09.08.2018 made in I.A.Nos.149 and 150 of 2018 in C.M.A.No.2 of 2017 passed by the learned Second Additional District Judge, Erode.

2. Mr.N.Manokaran, learned counsel for the appellant submitted that there was a sale agreement dated 14.06.1988 and one another agreement dated 09.06.1989, which were entered

between Kannagi (first respondent) and the deceased Nallasamy and his two minor sons. He further submitted that the suit property is an ancestral property. Therefore, when the subject matter of the suit property became the subject matter of the sale agreements dated 14.06.1988 and 09.06.1989, were sought to be decreed by filing two suits for specific performance in O.S.Nos.646 of 1993 and 594 of 1995.

3. Learned counsel for the appellant submitted that the suit property is having an extent of 3 acres in S.F.No.193/3C in Erode belongs to one Sarasammal, Nallasamy and respondents 3 and 4. They had agreed to sell the suit property at the rate of Rs.2,90,000/- per acre but they received only an advance sum of Rs.75,000/- from the first respondent. Although, two suits were decreed on 28.10.1997 by the learned Principal Subordinate Judge, Erode. As against which, two appeals, namely, A.S.Nos.986 of 1997 and 120 of 1998 were filed by the respondents, one by the respondents 5 to 7 [A.S.No.986 of 1997] and another by the respondents 2 and 3 [A.S.No.120 of 1998]. Both the appeals were tried together and dismissed by this Court on 30.04.2010.

4. Thereafter, the first respondent herein has filed E.P.No.22 of 2011 for execution of the sale deed and that was allowed, by an order dated 07.04.2016 and subsequently, the sale deed was also executed on 26.07.2016. Questioning the order of executing the sale deed dated 07.04.2016, the appellant has filed C.M.A.No.2 of 2017 on 19.08.2016. During the pendency of the said C.M.A., the judgment debtor, namely, Nallasamy died. Therefore, I.A.No.446 of 2017 has filed seeking an order to bring on record the legal representatives of the deceased Nallasamy and that was also allowed on 05.12.2017. As against which, the appellant has filed I.A.No.1 of 2017 to carry out the consequential amendment. In the meanwhile, E.P.No.20 of 2017 was filed for delivery of possession.

5. Mr.N.Manokaran, learned counsel for the appellant submitted that Sornambal was already brought on record, as she is having a share in the suit schedule property, the first respondent herein cannot be allowed to enjoy the judgment and decree passed by the trial Court, which was confirmed by this Court in A.S.Nos.986 of 1997 and 120 of 1998 on 30.04.2010.

6. When it is an admitted case that, the appellant is the daughter of one Sarasammal and sister of Nallasamy, the suit property is the ancestral one, until and unless, the partition of the suit schedule is settled, the decree and judgment passed by this Court in a common judgment in A.S.Nos.986 of 1997 and 120 of 1998 cannot be legally executed against the appellant.

7. In reply, Mr.S.Kaithamalai Kumaran, learned counsel for the first respondent, in support of his submission relying

on the common order passed by this Court in C.R.P.(PD)Nos.319 and 320 of 2017 and C.M.P.No.1444 of 2017 dated 12.07.2018 submitted that, Sornambal is not a party to the suit and she was subsequently impleaded as a party in the execution proceedings. It is not open to the appellant to say that she was not even given an opportunity to establish the defence. When the appellant's mother Sarasammal was a party to the suit, due to sudden demise of the said Sarasammal, the appellant has impleaded in the execution proceedings, being daughter of the deceased Sarasammal, she must know all the proceedings of the suit as well as the subsequent proceedings as a legal representative of the deceased Sarasammal. Therefore, the common order passed by this Court in C.R.P.(PD)Nos.319 and 320 of 2017 and C.M.P.No.1444 of 2017 dated 12.07.2018 made it absolutely clear that if at all she has any grievance, she can very well work out her remedy in the pending suit in O.S.No.230 of 2013 filed by her for partition.

8. Secondly, when the decree for specific performance was passed by the trial Court, which was confirmed by this Court in a common judgment dated 30.04.2010 in A.S.Nos.986 of 1997 and 120 of 1998, which was not even questioned by anyone and allow to become final and concluded, the execution Court is also bound to execute the same. Therefore, even allowing these Civil Miscellaneous Appeals are not going to carry any efficacious remedy to the appellant.

9. I fully agree with the submissions of the learned counsel for the first respondent. As rightly convinced by him that the suit filed by the first respondent for specific performance was decreed on 28.10.1997 and thereby, two appeals were filed, namely, A.S.Nos.986 of 1997 and 120 of 1998 and that were also came to be dismissed on 30.04.2010 by this Court. The decree holder, namely, the plaintiff, first respondent herein has filed E.P.No.22 of 2011 for execution of the sale deed, which was finally allowed on 07.04.2016 and subsequently, the sale deed was also executed on 26.07.2016.

10. At this stage, the appellant has filed C.M.A.No.2 of 2017 on 19.08.2016, during the pendency of the said C.M.A., the judgment holder, namely, Nallasamy also unfortunately died on 22.09.2017. Thereafter, I.A.No.446 of 2017 was filed seeking an order for impleading the legal representatives of the deceased Nallasamy and that was also allowed on 05.12.2017. Subsequently, the legal representatives were brought on record. As a result, I.A.No.1 of 2017 to carry out consequential amendment was dismissed and C.M.A.No.2 of 2017 was also dismissed for default on 30.01.2018.

11. Aggrieved over the same, the appellant has filed the above two Applications for restoration of the same and both

of them were dismissed by the learned Second Additional District Judge, Erode, on 09.08.2018. As against which, the present two Civil Miscellaneous Appeals have been filed by the appellant.

12. This Court has taken note of the fact that E.P.No.22 of 2011 was allowed on 07.04.2016 for execution of the sale deed and subsequently, the sale deed was executed on 26.07.2016. Secondly, the judgment and decree passed by the learned trial Judge dated 28.10.1997 in O.S.Nos.646 of 1993 and 594 of 1995 was confirmed by this Court in A.S.Nos.986 of 1997 and 120 of 1998 dated 30.04.2010.

13. Sornambal, having not assailed the impugned common judgment dated 30.04.2010 passed in A.S.Nos.986 of 1997 and 120 of 1998 and thereby, allowing the said judgment to become final. Thereafter, the order passed in E.P.No.22 of 2011 said to have been executed on 26.07.2016 as a devise to drag on the matter only for the sole reason that the common judgment and decree passed on 28.10.1997 in O.S.Nos.646 of 1993 and 594 of 1995, which was confirmed by this Court in A.S.Nos.986 of 1997 and 120 of 1998 dated 30.04.2010. Once the decree for specific performance has been executed in favour of the decree holder, the present two Appeals are liable to be dismissed, as they are bereft of merits. This Court finds no merits whatsoever in the present Civil Miscellaneous Appeals.

14. In the result, both Civil Miscellaneous Appeals are dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

sri

To

The Second Additional District Court,
Erode.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.49321

+1cc to Mr.N.Manokaran, Advocate, S.R.No.49313

C.M.A.Nos.2611 and 2612 of 2018
and C.M.P.No.19710 of 2018

RRS (08/07/2019)