

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.S.A.No.28 of 2018

&

CMP.No.23007 of 2018

K.Palanisamy

.. Appellant/Appellant/
Petitioner/3rd Party/5th Defendant

-vs-

K.Paramasivam

.. Respondent/Respondent/
Respondent/Decree Holder/Plaintiff

Prayer:

Civil Miscellaneous Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 15.11.2018 in A.S.No.22 of 2018 on the file of the I Additional District Court, Salem, confirming the judgment and decree dated 20.4.2018 in R.E.A.No233 of 2011 in R.E.P.No.39 of 2004 in O.S.No.414 of 1996 on the file of the I Additional Sub Court, Salem.

For Appellant : Mr.K.Selvaraj

For Respondent : Mr.D.Shivakumaran

JUDGMENT

This Civil Miscellaneous Second Appeal has been directed against the the judgment and decree dated 15.11.2018 in A.S.No.22 of 2018 on the file of the I Additional District Court, Salem, confirming the judgment and decree dated 20.4.2018 in R.E.A.No2.33 of 2011 in R.E.P.No.39 of 2004 in O.S.No.414 of 1996 on the file of the I Additional Sub Court, Salem.

2. The facts of the case leading to filing of present CMSA are as follows;

(i) The appellant herein is the purchaser of the property measuring 1.94 acres in S.No.69/10-D, Kanavaikaadu, Kothanur Village, Salem Taluk and District from Ponnusamy by a

registered sale deed dated 08.10.1993.

(ii) Originally the suit property belonged to one Idumba Gounder who executed a registered Will in favour of his grandson Muthusamy. After the death of Idumba Gounder in 1980, Muthusamy filed a suit in O.S.No.947 of 1990 before the District Munsif, Salem against his father Ponnusamy, his brothers Periasamy, Mathaiyan and his sister Mariammal restraining them from interfering with his possession and enjoyment of the subject property. The said suit was decreed on 10.11.1995.

(iii) Pending suit, Ponnusamy executed a sale deed in favour of the appellant on 8.10.1993 in respect of the subject property even though he did not have any right over the same as his father Idumba Gounder has executed a Will in 1954 in favour of his grandson Muthusamy in respect of the subject property.

(iv) Pending suit, Muthusamy also entered into an agreement of sale on 27.1.1993 with the respondent to sell the suit property.

(v) The respondent Paramasivam also filed suit in O.S.No.414 of 1996 before the Sub Court, Salem against his vendor Muthusamy and Muthusamy's minor children for specific performance. In O.S.No.414 of 1996, the appellant herein was also impleaded as a 5th defendant in the suit. In I.A.No.486 of 1996, the appellant remained exparte. The suit for specific performance was decreed on 28.06.2002, pursuant to which, the sale deed was executed through Court in favour of the respondent on 18.11.2002.

(vi) In September 2004, delivery was ordered in E.P.No.39 of 2004. When the respondent went to the subject property with the Ameen/VAO/Police, the appellant obstructed for the same and he also filed REA.No.421 of 2004 under section 47 of CPC stating that the decree is not executable on the ground that there is no decree for possession. REA.No.421 of 2004 was dismissed by the Additional Sub Court, Salem on 10.11.2004.

(vii) Thereafter, the appellant herein filed C.R.P.No.2579 of 2004 before this Court and the same was dismissed on 11.08.2009. Against the dismissal of CRP.No.2579 of 2004, the appellant preferred Special Leave Petition before the Supreme Court in SLP.No.33244 of 2011 and the said SLP was dismissed on 23.4.2012.

(viii) During the pendency of R.E.P.No.39 of 2004, the appellant filed REA. No. 233 of 2011 on 19.09.2011 under Order 21 Rule 97 and 103 to declare that the subject property belongs to him and that the decree in O.S.No.414 of 1996 is not binding upon him. The same was dismissed on 20.04.2018.

(ix) Against the dismissal of REA.No.233 of 2011, the appellant filed appeal in A.S.No.22 of 2018 before the I Additional District Court, Salem and the same was also dismissed on 15.11.2018. Challenging the same, the present C.M.S.A.No.28 of 2018 is filed.

3. Heard the submissions of learned counsel Mr.K.Selvaraj appearing for the appellant and learned counsel Mr.D.Shiva Kumaran, appearing for the respondent and perused the materials available on record.

4. Perusal of records would reveal that the suit filed by the respondent for specific performance was decreed and in pursuance of which, execution proceedings were initiated by the respondent in REP.No.39 of 2004, wherein, the appellant filed REA.No.233 of 2011 praying to declare that the petition mentioned property belongs to the appellant and the decree passed in OS.No.414 of 1996 does not bind on the appellant. Against the dismissal of REA.No.233 of 2011, the appellant filed appeal in A.S.No.22 of 2018 and the same was also dismissed by the first appellate court.

5. Further, it is seen that the C.R.P.No.2579 of 2004 filed by the appellant has also been dismissed by this Court. Against the dismissal, the appellant preferred Special Leave Petition before the Supreme Court in SLP.No.33244 of 2011 and the said SLP was dismissed on 23.4.2012.

6. Present appellant has filed a petition in REA.No.421 of 2004 under Section 47 of CPC . That petition was also dismissed. Again, he filed petition under Order 21, Rule 97 and 103 and 151 of CPC in REA.No.233 of 2011.

7. It is seen that since the appellant was already a party to the suit as 5th defendant in O.S.No.414 of 1996, he has rightly filed a petition under section 47 CPC which was dismissed even at the level of the Supreme Court.

8. The appellant, being a party to the litigation has suffered a decree. The decree is binding on him. In other words, his claim to title has been rejected and declared in favour of the respondent. After having suffered a decree, he is not entitled to set up a fresh case arraying himself as an obstructor. Such an attempt by a Judgment Debtor is sheer abuse of process of law and vexatious.

9. The execution court, considering all the factual aspects, has also rightly dismissed the application filed by the appellant. Now that he cannot maintain a petition under Order

21 Rule 97 CPC as an obstructor. So, I do not find any reason to interfere with the findings of the court below. In view of the above, the Civil Miscellaneous Second Appeal is dismissed. Therefore the order passed in A.S.No.22 of 2018 on the file of the I Additional District Court, Salem, confirming the judgment and decree dated 20.4.2018 passed in R.E.A.No233 of 2011 in R.E.P.No.39 of 2004 in O.S.No.414 of 1996 on the file of the I Additional Sub Court, Salem is hereby confirmed. No costs. Consequently, the connected CMP.No.23007 of 2018 is closed.

10. The appellant is directed to deliver the vacant possession of the suit property to the decree holder within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msr

To

1.The I Addl. District Judge, Salem

2.The I Addl. Sub Judge, Salem.

+1cc to Mr.K.Selvaraj, Advocate in sr.no.27872

+1cc to Mr.D.Shivakumaran, Advocate in sr.no.28698

C.M.S.A.No.28 of 2018

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CMP.No.23007 of 2018

KJ(CO)

CS/10/06/2019

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