



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2019

PRONOUNCED ON : 24.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.11 of 2012

and

M.P.(MD).No.1 of 2012 and

C.M.P.(MD).No.7284 of 2018

1.Ramaraj

2.Amudha

3.Mahalatchumi

4.Ramachandran ... Appellant/Petitioners/ 3rd parties

Vs.

1.Rajeshwari ... 1st respondent /1st respondent / Plaintiff

2.Saivaraj ... 2nd respondent /
2nd respondent / 1st defendant

(The 2nd respondent was set *ex parte*, as per the order of the Court, dated 12.01.2018)

PRAYER:- Appeal filed under Order 43 Rule 1(J) of C.P.C., against the order, dated 19.08.2011, made in E.A.No.31 of 2010 in E.P.No.91 of 2006 in O.S.No.7 of 2001 on the file of the Fast Track Court (Additional District and Sessions Judge, Pudukkottai).

For appellants : Mr.N.Balakrishnan

For 1st respondent : Mrs.AL.Gandhimathi

JUDGMENT

This appeal has been filed by the appellants / 3rd parties against the order dated 19.08.2011 passed in E.A.No.31 of 2010 in E.P.No.91 of 2006 in O.S.No.7 of 2001, whereby and whereunder the Court below dismissed the petition filed by the appellants seeking to raise the attachment of the properties in item Nos.1 and 2.

2. The 1st respondent herein, along with her husband and two daughters, had filed the suit in O.S.No.7 of 2001 claiming compensation of Rs.5 lakhs against the 2nd respondent herein and two



others for the death of her 10 year old daughter in the quarry of the 2nd respondent. After trial, the trial Court decreed the suit in part on 20.09.2005, thereby directed the 2nd respondent herein to pay a sum of Rs.75,000/- as compensation to the first respondent herein. The first respondent herein has filed an execution petition and attached four properties of the 2nd respondent. At the instance of one third party, the 4th item of the property was released from the attachment. Item Nos.1 to 3 were brought for sale through Court auction and after getting permission from the Court, the first respondent herein has taken the said properties in Court auction on 06.10.2010 and the entire formalities of Court auction sale was completed, but the confirmation of sale and execution of sale certified was to be done. At that time, the appellants/petitioners, who are the legal heirs of the 2nd respondent herein/judgment debtor, filed E.A.No.31 of 2006 seeking to raise item Nos.1 and 2 from the attachment stating that the item Nos.1 and 2 are their ancestral properties and therefore, they are entitled to 4/5th share in the same.

3. On the side of the appellants / 3rd parties, the first appellant himself was examined as PW1 and Exs.P1 to P7 were marked. On the side of the respondents herein, no oral and documentary evidence have been marked.

4. After considering the oral and documentary evidence, the trial Court has dismissed the execution application holding that the application filed by the appellants after the sale of the properties is not maintainable and that the appellants have not produced the Legal Heir Certificate of Rangasamy, who is the father of the 2nd respondent, to show that the appellants and the 2nd respondent are the legal heirs of the said Rengasamy and the 2nd and 3rd appellants have not produced any documents in order to show that their marriage took place after 1989. Challenging the said order, the appellants have filed this appeal.

5. The learned counsel for the appellants submitted that the subject properties are ancestral properties of the appellants and the 2nd respondent and the appellants and the 2nd respondent are entitled to each 1/5th share in the same and therefore, the said properties could not be brought for sale towards the liability of the 2nd respondent alone as he is entitled to only 1/5 share in the same. In this case, though the auction was held on 06.10.2010, the petitioners have filed the application before the confirmation of sale and after dismissal of the application before the Court below, they approached this Court and obtained an order of stay for confirmation of sale. But, the Court below, without looking into the order of stay, has confirmed the sale on 05.12.2012 and issued sale certificate on 27.03.2013. The confirmation of sale and issuance of sale certificate are null and void as they are hit by stay order of this Court as well as Order 21 Rule 59(b) of C.P.C.

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He/they would submit that the Court below has dismissed the



application mainly holding that the appellants have not produced legal heir certificate and marriage invitation in order to substantiate their contention that they are also the legal heirs of Rengasamy, along with the 2nd respondent and the marriage of the 2nd and 3rd appellants took place after 1989 and hence, now the appellants have filed those documents in C.M.P.(MD).No. 7284 of 2018 for marking as additional documents. Thus, he prayed to allow this appeal.

6. The learned counsel appearing for the first respondent submitted that the appellants have filed their claim petition only after the auction of the properties and the Court below has rightly held that once a sale is effected awaiting confirmation of sale, the claim petition is not maintainable under Order 21 Rule 58 C.P.C. Subsequently, the Court below has executed the sale certificate dated 23.07.2013 in favour of the first respondent on the basis of confirmation of sale dated 05.12.2012. The learned counsel would further submit that the appellants herein have slept over the matter from 2001 onwards and suddenly, they filed the claim application in the year 2011 only to drag on the proceedings and to deny the fruits of the decree to the first respondent. The appellants have not produced any document to show that they have a share in the properties in question and therefore, as rightly held by the Court below, they have to file a suit under Order 21 Rule 101 of C.P.C. Further, the appellants have belatedly produced the legal heir certificate and marriage invitations of the 2nd and 3rd appellants and therefore, the same may not be accepted at this stage. Thus, she prayed to dismiss this appeal.

7. Heard the learned counsel for both sides and perused the records carefully.

8. On going through the record, a doubt had arisen about the pendency of the execution petition before the Court below. On verification from the Court below, it came to light that E.P.No.91 of 2006 has already been terminated on 18.12.2013 itself, after issuance of sale certificate to the first respondent and therefore, this appeal has become infructuous. It is painful to record that both the learned counsel for the appellants as well as the learned counsel for the first respondent did not bring to the notice of the Court about the termination of execution petition, even in their written arguments.

9. The contention of the learned counsel appellants is that the Court below, without looking into the order of stay granted in this appeal, has confirmed the sale on 05.12.2012 and issued sale certificate on 27.03.2013. The confirmation of sale and issuance of sale certificate are null and void as they are hit by stay order of this Court as well as Order 21 Rule 59(b) of C.P.C.



10. At this juncture, this Court is of the view that it would be appropriate to refer to Order 21 Rule 59 of C.P.C. which reads as follows:

"Stay of sale.- Where before the claim was preferred or the objection was made, the property attached had already been adverted for sale, the Court may-

(a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed, and such order may be made subject to such terms and conditions as security or otherwise as the Court thinks fit."

11. The above provision makes it clear that pending adjudication of a claim in respect of immovable property, the Court may order to proceed with the sale but stay the confirmation. But, admittedly, in this case, the application filed by the appellants to raise attachment has already been dismissed, against which the present appeal has been filed. When the appeal came up for admission on 05.01.2012, this Court has granted interim stay for a period of one week. Thereafter, it has not been listed and extended. On 11.02.2015, it has been listed and interim order was extended. The appellants have not filed any petition for extension of stay and they have also not taken any steps to cause to list the matter before the Court. While so, the Court below has confirmed the sale on 05.12.2012 and executed sale certificate on 23.07.2013. As the confirmation of sale has been made and the sale certificate has been issued, while the interim order of stay was not in force, the Court below cannot be blamed. Having failed to be vigilant, now the appellants cannot blame the Court. In view of the above, this Court is inclined to dismiss this appeal as infructuous.

12. In the result, this Civil Miscellaneous Appeal is dismissed as infructuous. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

Gcg

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To

1.The Additional District and Sessions Judge, (FTC)
Pudukkottai.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1CC TO MR.N.BALAKRISHNAN, Advocate Sr. No.94337
+1CC TO MR.AL.GANTHIMATHI, Advocate Sr. No. 94457

Judgment in
C.M.A(MD).No.11 of 2012
24.10.2019

KM(CO)
TR(07.11.2019) 5P 6C