



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 25.09.2019

CORAM

WEB COPY

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.S.A. (MD)No.18 of 2009

and

M.P. (MD)No.1 of 2009

D. Janaki Ammal : Appellant/1st Respondent

Vs.

1.G.Subbulakshmi
2.R.Dhanalakshmi
3.R.Saroja
4.R.Jayalakshmi : Respondents 1 to 4/Appellants
5.P.Gurusamy Raja
6.P.Dharmalingam
7.D.Janaki
8.J.Puspavalli
9.T.Anusuya sankar
10.I.Karmegam
11.P.Subbaiah : Respondents 5 to 11/Respondents 2 to 8

Prayer : This Civil Miscellaneous Second Appeal is filed under Section 108 and Order 42 Rule 1 of CPC r/w. Section 100 of CPC, to set aside the fair and decreetal order passed in C.M.A.No.32 of 2007 on the file of the learned Principal District Judge, Virudhunagar at Srivilliputhur dated 17.11.2008 reversing the fair and decreetal order passed in E.A.No.451 of 2004 in E.P.No.56 of 2002 in O.S.No.6 of 1995 on the file of the Sub Court, Srivilliputhur dated 05.06.2007.

For Petitioner	: Mr.P.Velmurugan
For Respondents 1 to 4	: Mr.S.Kadarkarai
For 7 th Respondent	: Mr.M.Ashok Kumar
For Respondents 8 and 9	: Mr.A.Sivaji
For Respondents 5 and 6, 11	: No Appearance
For 10 th Respondent	: Dismissed



ORDER

The above Civil Miscellaneous Second Appeal raises against the judgment and decree passed in C.M.A.No.32 of 2007 by the learned Principal District Judge, Virudhunagar reversing the fair and decretal order passed in E.A.No.451 of 2004 in E.P.No.56 of 2002 in O.S.No.6 of 1995 by the Sub Court, Srivilliputhur dated 05.06.2007.

2.The said E.A.No.451 of 2004 has been filed by the appellant herein as a third party in the suit as well as in the execution proceedings. The facts in brief without going into details are as follows:

The respondents 1 to 4 herein who are the plaintiffs had filed a suit in O.S.No.6 of 1995 on the file of the learned Sub Judge, Srivilliputhur for partition against the respondents 5, 6, 9 to 11 who are the brothers and the respondents 7 and 8 who are the other sisters. The suit for partition was originally dismissed by the learned Judge and on appeal in A.S.No.158 of 1997, the learned Principal District Judge, Kamarajar District in charge of Srivilliputhur was pleased to set aside the judgment and decree of the trial Court and granted partition in respect of items 1 to 4 and 7. After the judgment and decree in A.S.No.158 of 1997, the final decree was also passed in I.A.No.795 of 1999, wherein the property was allotted to the sharers. The said decree was sought to be executed by the plaintiffs in E.P.No.56 of 2002. At this juncture, the appellant before this Court came forward with impugned Execution Application invoking Section 47 and Order 21 Rule 97 and Section 100 of CPC. It is the case of the appellant that she had purchased the second item of the property from the fifth defendant and the sale had taken place much prior to the filing of the suit, namely 30.08.1994. The respondents 1 to 4 had contested the said application by contending that the sale itself was a collusive one and that it has been effected after paper publication, warning the public from purchasing the property and it was only an attempt to remove the property out of the reach of the plaintiffs. The learned Sub Judge, Srivilliputhur by his order dated 05.06.2007, was pleased to allow the said Execution Application.

3.Aggrieved by the said order, the respondents 1 to 4 filed C.M.A.No.32 of 2007 on the file of the learned Principal District Judge, Srivilliputhur. The learned Principal District Judge reversed the order passed by the learned Sub Judge. The learned Judge has taken note of the fact that the appellant is none other the wife of the sixth respondent, who is the second defendant in the suit and she has purchased the property from the fifth respondent, who is the first defendant in the suit. The learned Judge also note that the legal notice had been issued even as early as in the year 1993 to the brothers demanding partition and it is after the notice, the sale has been effected, which clearly shows that it is collusive one. With these findings, the learned District Judge has reversed



the order passed in E.A.No.451 of 2004. Challenging the said order, the appellant has before this Court.

4.Heard the counsel on both sides. From the perusal of the records, it is very evident that the sisters had instituted the dispute as early as in the year 1992, by taking out paper publication. Thereafter, on 25.09.1993, they have issued a legal notice to the brothers calling upon them to effect the partition. Admittedly, the brothers did not come forward to partition the property and ultimately, the suit came to be filed by the plaintiffs on 09.10.1994. In *interregnum*, it appears that the second defendant has set up his wife and purchased first item of the property which appears to be a clear attempt to remove the same from the reach of the plaintiffs. The learned District Judge has considered all these factors and have come to the conclusion that the petition lacks bonafideness and allowed the appeal setting aside the order passed in E.A.No.451 of 2004. I do not find any infirmity in the order passed by the learned District Judge which calls for the interfere of this Court.

5.Accordingly, this Civil Miscellaneous Second Appeal stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

mrn

To

- 1.The Principal District Judge, Virudhunagar at Srivilliputhur.
- 2.The Sub Judge, Srivilliputhur.

Copy to: The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.(2)

- +1 CC to M/s.S.KADARKARAI, Advocate SR-89523.
- +1 CC to M/s.M.ASKOH KUMAR, Advocate SR-89668.
- +1 CC to M/s.P.VELMURUGAN, Advocate SR-90041.

C.M.S.A. (MD)No.18 of 2009

CS (08.11.2019) 3P 8C