



C.M.S.A(MD)No.37 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.03.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.S.A(MD)No.37 of 2013

and

M.P(MD)No.1 of 2013

C.Krishnamoorthy

... Appellant/Appellant/
Petitioner

Vs.

1.P.Krishnan

2.G.Ayyasamy

3.G.Murugesan

4.Rajamurugan

5.Ranimathi

6.Bakkiyalakshmi

7.Jayalakshmi

... Respondents/Respondents/
Respondents 2,5-7 & 9-11

PRAYER: Civil Miscellaneous Second Appeal is filed under Order 21 Rule 97 read with Section 100 of Code of Civil Procedure, to set aside the order of dismissal dated 27.06.2013 made in C.M.A(MD)No.8 of 2013 on the file of the Principal District Judge, Tiruchirappalli confirming the order dated 20.12.2012 made in E.A.No.70 of 2006 in E.P.No.371 of 2005 in O.S.No.565 of 1984 on the file of I Additional



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Sub Ordinate Judge, Tiruchirappalli, allow the E.A.No.70 of 2006 in E.P.No.371 of 2005 in O.S.No.565 of 1984 on the file of I Additional Subordinate Judge, Tiruchirappalli.

For Appellant : Mr.K.S.Vamsidhar

For R1 : Mr.P.Thiagarajan

JUDGEMENT

The respondent in the appeal had filed O.S.No.565 of 1984 for the relief of recovery of possession as against one Gurusamy Nadar and others. The said suit was decreed on 27.08.1999. In order to execute the said decree, the decree holder had filed E.P.No.371 of 2005. Pending execution proceedings, the present appellant had filed E.A.No.70 of 2006 under Order 21 Rule 97 of Code of Civil Procedure on the ground that he is having an independent title to the property and his possession cannot be disturbed in the execution proceedings. The said obstruction petition was dismissed by the Execution Court on 20.12.2012. Challenging the same, the appellant had filed C.M.A.No.8 of 2013 before the Principal District Court, Tiruchirappalli and the same was also dismissed on 27.06.2013. Challenging the same, the present second appeal has been filed by the petitioner in the obstruction petition.



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2. According to the learned counsel appearing for the appellant, the present appellant, namely C.Krishnamoorthy is an agreement holder from the 2nd defendant in the suit, namely N.P.V.Gurusamy Nadar. Therefore, he has got right and he has paid the sale consideration. He has also taken possession pursuant to the said sale agreement and therefore, his possession cannot be disturbed by way of executing the decree in O.S.No.565 of 1984.

3. Per contra, the learned counsel appearing for the respondent had contended that the 2nd defendant in the suit, namely N.P.V.Gurusamy Nadar had filed O.S.No.622 of 1984 contending that he is an agreement holder from the plaintiff in O.S.No.565 of 1984. The said suit for specific performance was dismissed by the trial Court. As against the same, the plaintiff therein had filed A.S.Nos.620 and 621 of 1999 before this Court and the same was dismissed by the High Court on 23.06.2009. According to the learned counsel appearing for the respondent, the present appellant's father was originally impleaded as 12th defendant in O.S.No. 622 of 1984 and after his death, the present appellant was impleaded as the 20th defendant in the said suit. Therefore, the title relating to the disputed property has already been decided by this Court in A.S.Nos.620 and 621 of 1999. After a decision has been arrived at by this Court in the



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said first appeals, the present C.M.S.A arising out of execution proceedings claiming independent title is not maintainable.

4. I have carefully considered the submissions made on either side.

5. A perusal of the application in E.A.No.70 of 2006 indicates that it has been filed under Order 21 Rule 97 of Code of Civil Procedure. It is a settled position of law that any application under Order 21 Rule 97 of Code of Civil Procedure can be filed only by a party, who is claiming independent title through a different source other than that of the judgment debtor. In the present case, admittedly, the present appellant and his father Chinnaiyyan are tracing title through the defendant in the present suit, namely as an agreement holder from N.P.V.Gurusamy Nadar. Therefore, it is clear that the present application under Order 21 Rule 97 of Code of Civil Procedure is not maintainable in law.

6. Even assuming that they are 3rd parties to the suit, any application under Order 21 Rule 97 of Code of Civil Procedure has to be tried as a civil suit to decide about the title dispute between the parties. In the present case, the defendant in O.S.No.565 of 1984 had filed a suit for specific performance claiming title over the property in dispute. In the said suit, not only the plaintiff herein, but also the present appellant's



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father was impleaded as parties. After the death of the present appellant's father, the appellant himself has been impleaded as one of the defendants in the said suit for specific performance. The said suit for specific performance has been dismissed by the trial Court and confirmed by this Court. Therefore, the title of the plaintiff in the present suit has been confirmed and the prayer for specific performance raised by the defendant in the present suit and the appellant in the present second appeal have been rejected by this Court. The title to the property has already been decided and therefore, the issue of again going into the title between the parties does not arise in an application under Order 21 Rule 97 of Code of Civil Procedure.

7. In view of the above said facts, all the substantial questions of law raised by the appellant are answered as against the appellant and the Civil Miscellaneous Second Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

20.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal District Judge,
Tiruchirappalli.
- 2.The Additional Sub Ordinate Judge I,
Tiruchirappalli.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
C.M.S.A(MD)No.37 of 2013

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