



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.P. (MD) .Nos.3431 & 3432 of 2019

and 11681 of 2019

in

S.A. (MD) .No.432 of 2013

WEB COPY

C.M.P. (MD) .Nos.3431 & 3432 of 2019

E.S.Harikrishnan

... Petitioner

Vs.

V.Eswaramoorthy (died)

1.E.Vijayalakshmi

2.E.Aravinth

3.E.Balaji

... Respondents

Prayer: These applications have been filed under Order 22 Rule 9 (2) and (4) of C.P.C., to set aside the abatement caused due to the death of the sole respondent in the second appeal and to bring on record the respondents as legal representatives of the deceased respondent as appellants 2 to 4 in the above second appeal, respectively.

For Petitioner : Mr.A.Ilangovan

For Respondents : No appearance

S.A. (MD) .No.432 of 2013

E.S.Harikrishnan

... Appellant/Appellant/Plaintiff

Vs.

V.Eswaramoorthy

... Respondent/Respondent/Defendant

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.70 of 2012, dated 28.02.2013 passed by the Principal Subordinate Judge, Madurai, confirming the judgment and decree of the Principal District Munsif Court, Madurai Town, in O.S.No.539 of 2011, dated 06.07.2012.

For Appellant : Mr.A.Ilangovan

For Respondent : No appearance

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

The applications in C.M.P.(MD).Nos.3431 and 3432 of 2019 have been filed to set aside the abatement caused due to the death of
<https://hcservices.ecourts.gov.in/hcservices/>



the sole respondent in the second appeal and to bring on record the respondents as legal representatives of the deceased respondent.

2. The second appeal has been originally filed as against the concurrent finding of the Courts below. The suit has been filed for permanent injunction restraining the vendor from alienating/encumbering the suit property pursuant to the agreement for sale, dated 13.01.2011.

3. The case of the plaintiff before the trial Court that he entered into an agreement with the defendant on 13.01.2011 and the same was marked as Ex.A6. However, the defendant did not execute the sale deed. Hence, permanent injunction has been sought against the vendor not to alienate the suit properties to the third parties. Both the Court below framed necessary issues and dismissed the suit as well as appeal suit.

4. During the pendency of the appeal, it appears that the sole respondent died and steps have not been taken and now the applications have been filed to set aside the abatement caused due to the death of the sole respondent and to bring on record the respondents as legal representatives of the deceased respondent.

5. I have heard the learned counsel for the petitioner and perused the materials available on record.

6. Mere agreement does not create any charge or interest over the suit property. The doctrine of performance can be used only as a shield and not as a sword. Therefore, at the most, the plaintiff herein to enforce the contract for sale and he cannot seek permanent injunction against the vendor. Therefore, I do not find any arbitrariness in the judgment of the trial Court as well as the appellate Court and there is no substantial question of law involved in the second appeal. Hence, impleading the legal representatives does not arise at all. Accordingly, all the applications are dismissed. Consequently, the second appeal is also dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



To
1.The Principal Subordinate Judge,
Madurai.

2.The Principal District Munsif,
Madurai Town.

Copy to

The Section Officer
VR Section
Madurai Bench of Madras High Court,
Madurai-2 copies

+1 CC to Mr.D.MALAICHAMY, Advocate (SR-103493[F] dated 05/12/2019
)

C.M.P. (MD) .Nos.3431 & 3432 of 2019and
CMP (MD) No.11681 OF 2019
IN
S.A. (MD) .No.432 of 2013
04.12.2019

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