



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 13.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. (MD)No.229 of 2019

and

C.M.P. (MD)No.12206 of 2019

WEB COPY

M.Vasuki

... Appellant / Plaintiff

Vs.

1.N.Murugan

2.P.Veil Muthu

3.S.Narayanasamy

4.S.Amsarajan

5.B.Kesavan

... Respondents / Defendants

PRAYER: This Appeal Suit is filed under Section 96 r/w Order 41 Rule 1 of Civil Procedure Code, to set aside the order dated 06.11.2019 rejecting the plaint in unnumbered O.S... of 2019 in S.R.No.8945 of 2019 by the Principal District Judge, Theni.

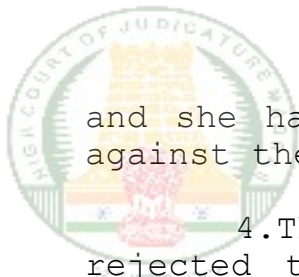
For Appellant : Mr.D.Malaisamy

JUDGMENT

This Appeal Suit is filed against the order of rejecting the plaint by the trial Court even before numbering the suit.

2.The trial Court has rejected the suit on the ground that the plaintiff has already filed E.A.No.156 of 2013 in E.A.No.228 of 2012 in E.P.No.51 of 2009 and it reached finality. Therefore, the suit is not maintainable and rejected.

3.The suit is filed on the premise that the plaintiff has purchased the suit property on 08.03.2011 from the third defendant through his Power of Attorney, the fourth defendant for a valuable consideration and the plaintiff is in possession of the property. While so, on 05.12.2013, she came to know that the 5th defendant came to the suit property and disclosed that he has already obtained a decree and judgment on 09.12.2003 in respect of the suit property. Therefore, the plaintiff has also filed E.A.No.156 of 2013 in E.A.No.228 of 2012 in E.P.No.51 of 2009. The same was dismissed and against which, the Civil Revision Petition is filed in C.R.P.No.2668 of 2016 and the same was also dismissed on 19.01.2017. Hence, it is the contention that she is bonafide purchaser and she has not aware of the earlier proceedings, such as O.S.No.152 of 1996. Therefore, she sought to challenge the decree and judgment made in O.S.No.152 of 1996 and sought for a declaration that she is the absolute owner



and she has also claimed a sum of Rs.10,10,760/-, as compensation against the defendants jointly and severally.

4.The trial Court even without numbering the suit, has rejected the plaint. It is well settled that the suit can be rejected only when the plaint is already on record and the suit can be rejected only on the ground set out under Order 7 Rule 11 of C.P.C. Similarly the suit can also be rejected on the ground of re-litigation and abuse of process of law. This can be decided by the trial Court only after numbering the suit, not before the plaint is being come on record.

5.Such being the position, mere docket order, rejecting the suit is not according to law. Hence, the order of the trial Court, rejecting the plaint before numbering the suit, is set aside and the trial Court is directed to number the suit, then decide whether the suit is an abuse of process of law or re-litigation, whether any compensation could be claimed after lapse of several years and whether the suit is barred by limitation. All these facts can be taken note of the trial Court, after numbering the suit.

6.With the above observations, this Appeal Suit is allowed at the stage of admission itself. It is also made clear that there cannot be any interim orders, as far as the execution proceedings are concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Myr

To
The Principal District Judge, Theni.

Copy to:

The Section Officer, Vernacular Records, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-104843[F] dated
13/12/2019)

A.S. (MD) No.229 of 2019
13.12.2019