

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 798 of 2015

M.Vairavasamy Nadar ..Appellant/Appellant/
1st Respondent/Decree Holder

Vs.

1.S.M.Seeni Syed Ahamed ..1st Respondent/1st Respondent/
Claimant

2.Chokkammal ..2nd Respondent/2nd Respondent/
Judgment Debtor

Prayer: Second Appeal filed under Section 100 of C.P.C, against the judgement and decree passed by the III - Additional City Civil Judge, Chennai dated 13.02.2015 made in A.S.No. 524 of 2012 confirming the fair and decreetal order passed by the learned IX Asst. City Civil Judge, Chennai dated 03.10.2012 made in E.A.No. 11397 of 2010 in E.P.No.123 of 2010 in O.S.No. 2213 of 2007.

For Appellant : Mr.M.Liagat Ali

For Respondents : Mr.R.Narendran for R1

R2 - (No Appearance)

Not ready in Notice

J U D G M E N T

The appellant, who had obtained a money decree against the second respondent herein in O.S.No. 2213 of 2007 had attached the property claiming that it belong to the second respondent.

2. The first repsondent filed a claim petition in E.A.No. 11397 of 2010 under Order 21 Rule 58 of C.P.C. seeking to raise the attachement, contending that he has purchased the property from the second respondent and 13 others by two sale deeds dated 21.01.2008 and 18.02.2008 and those sale deeds have been

registered as document nos. 27 and 151 of 2008 in the office of the Sub-Registrar, Sowcarpet. Therefore, according to the respondent / claimant, the appellant has no right to attach the suit property in execution of the money decree that he had obtained against the second respondent.

3. This application was resisted by the appellant raising various contentions including that the second respondent and others had only a life estate over the properties and therefore, the sale by them in favour of the first respondent itself is not valid. It is also claimed that the same occurred after the decree in the money suit and therefore, it is subject to the decree. At trial the first respondent was examined as P.W.1 and Exs. P1 to P16 were marked. The appellant was examined as R.W.1 and Exs. R1 to R6 were marked.

4. The Trial Court, upon a consideration of the evidence on record concluded that since the attachment was after the sale deed, the same would not prevail over the sale deed. The Trial Court also found that the decree holder has also received a sum of Rs.4,20,000/- from Chokkammal namely, the second respondent towards all his claim in respect of the property. On the above findings, the learned Trial Judge allowed the application raising the attachment. Aggrieved, the appellant preferred an appeal in A.S.No. 524 of 2012 before the III - Additional City Civil Judge, Chennai. The learned Appellate Judge, upon a reconsideration of the evidence on record concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved, the appellant has come up with this second appeal.

5. I have heard Mr.M.Liagat Ali, learned counsel for the appellant.

6. Mr.M.Liagat Ali would vehemently contend that the sale deeds having been executed after the decree are invalid and the vendor namely, Chokkammal had only a life estate and therefore, the sale in favour of the first respondent by her is vitiated. I am unable to countenance both the submissions of the learned counsel. The decree that is passed in O.S.No. 2213 of 2007 being a money decree will not create any interest in the property of the judgment debtor in favour of the creditor. The attachment will take effect only from the date on which it is effected, whereas the sale had taken place in 2008 itself. The sale is well ahead of attachment. The sale would prevail over the attachment.

7. The second contention of the learned ocunsel is that the second respondent, Chokkammal was entitled only to a life estate. The sale by a life estate holder will be valid till hisor her life time. Admittedly, Chokkammal has life estate even today therefore, the sale by Chokkammal of the life estate

is valid even today and so long as she is alive. Hence, I do not see any error or perversity in the judgments of the Courts below. There is no question of law much less a substantial questions of law arising in this appeal in order to enable me to entertain the appeal. Hence, this appeal fails and it is accordingly dismissed. No costs. It is open to the appellant to execute the decree as against the Chokkammal.

Sd/-

Assistant Registrar(CS-)

// True Copy//

Sub Assistant Registrar

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To:-

1. The III - Additional City Civil Judge,
Chennai.
2. The IX Asst. City Civil Judge,
Chennai.

Copy to: The Section Officer,
VR Section, High Court, Madras.

S.A.No. 798 of 2015

GJ(CO)
EU 19.12.2020

सत्यमेव जयते

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