

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1127 of 2020

K.Viswanathan

..Appellant/Respondent/Plaintiff

-vs-

1.Rathileela Samuvel
rep.by her General Power of
Attorney Agent Nirmala Samuvel ..1st Respondent/Respondent

2.Rathileela Samuvel ..2nd Respondent/2nd Respondent
/Defendent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Order XLIII, Rule 1 of the Civil Procedure Code, against the order raising the order of attachment before judgment dated 20.03.2020 made in I.A.No.9 of 2020 in I.A.No.2 of 2019 in O.S.No.27 of 2019 on the file of the IV Additional District Judge, Bhavani, Erode District.

For Appellant :: Mr.S.Vediappan

For Respondents :: Mr.N.S.Sivakumar for R2/Caveator

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. The present civil miscellaneous appeal has been directed against the fair and decretal order passed in I.A.No.9 of 2020 in I.A.No.2 of 2019 in O.S.No.27 of 2019 dated 20.3.2020, in and by which the trial Court, having granted an order of attachment before judgment, recalled the same. Aggrieved thereby, this appeal has been filed by the appellant/plaintiff.

3. Mr.S.Vediappan, learned counsel appearing for the appellant argued that originally the second respondent had given a general power of attorney to the first respondent on 15.5.2009. Thereafter, a promissory note was executed by Mrs.Nirmala Samuvel, being the power agent of her daughter

Mrs.Rathileela Samuvel, the second respondent herein in favour of the appellant on 3.9.2016. Based on the said promissory note, a suit was also filed by the appellant during August, 2019 against the agent-Mrs.Nirmala Samuvel, as her daughter Mrs.Rathileela Samuvel was studying MBBS course. On completion of her course, she started practicing and after her marriage, started residing in Chennai only and her address was not known to the appellant/plaintiff. Even the pre-suit legal notice issued to the known address of Mrs.Rathileela Samuvel was also returned. Therefore, the appellant/plaintiff filed the suit only against the agent Mrs.Nirmala Samuvel. Hence, the interlocutory application in I.A.No.2 of 2019 in O.S.No.27 of 2019 filed by the appellant/plaintiff seeking attachment of the property, namely, land and building consisting of 3939 sq.ft., extent in Door No.534/283 situate at Kacherry Street, within the municipal limits of Gobichettipalayam Town in T.S.Nos.85, 86, Natham No.89 part, Ward B, Block 8 in Patta Nos.1149, 1150, was allowed by the trial Court, by order dated 29.8.2019 and thereafter, the suit was posted for ex parte evidence. From the pleadings filed by the second respondent, the appellant/plaintiff came to know that there was a serious dispute between the mother and daughter, therefore, Mrs.Rathileela Samuvel, who is the Principal, having cancelled the power of attorney granted to her mother on 15.7.2019, decided to defend the suit on her own. Hence, she filed I.A.No.6 of 2020 in I.A.No.2 of 2019 in O.S.No.27 of 2019 under Order IX, Rule 7 of Civil Procedure Code to set aside the ex parte order of attachment before judgment against her power of attorney agent, namely, Mrs.Nirmala Samuvel, the first defendant. She also filed interlocutory applications in I.A.Nos.7 & 8 of 2020 in I.A.No.2 of 2019 in O.S.No.27 of 2019 to implead herself and to remove her mother from the suit and all the interlocutory applications, namely, I.A.Nos.6, 7, 8 of 2020 were allowed on 7.3.2020. Even before the applications were allowed, she also filed another I.A.No.9 of 2020 to raise the order of attachment before judgment. Later on, the I.A.No.9 of 2020 was also allowed on 20.3.2020, ignoring the request of the learned counsel for appellant/plaintiff to adjourn the proceedings by one month, as the Corona virus has been spreading all over the State of Tamil Nadu, that was also rightly brought to the notice of the trial Court by showing the circular issued by the Registrar General of the High Court in ROC No.1363/2020 dated 17.3.2020. In spite of the Covid-19 pandemic situation, the trial Court had not considered the request and on the contrary, chose to dismiss the petition for adjournment in I.A.No.11 of 2020 in O.S.No.27 of 2019 on 18.3.2020, and finally passed the impugned order raising the attachment before judgment. Therefore, the appellant/plaintiff has come to this Court by way of appeal.

4. When it was pleaded by Mrs.Rathileela Samuvel before the trial Court that the suit promissory note was a false one and the appellant/plaintiff had no financial capacity to lend a sum of Rs.20 lakhs, the matter should have been considered properly on the basis of the evidence placed by the appellant/plaintiff. Secondly, when the suit summons were served on the respondents, they remained ex parte. Therefore, an ex parte order was passed on 29.8.2019 and the petition for attachment before judgment was allowed. When the matter stands as above, entertaining of the unnecessary I.A's, namely, I.A.Nos.6, 7, 8 & 9 of 2020 for the aforementioned reliefs are without any justification, hence, the impugned order dated 20.3.2020 passed by the trial Court recalling the order of attachment before judgment should be set aside, and the order dated 29.8.2019 should be restored back.

5. Opposing the above prayer, Mr.N.S.Sivakumar, learned counsel appearing for the second respondent/caveator submitted that the appellant/plaintiff has no legal basis or foundation to approach the trial Court in filing the present suit for recovery of a sum of Rs.26,98,666/-, on the basis of the promissory note dated 3.9.2016 executed by Mrs.Nirmala Samuvel. The reason being that the very same property was the subject matter of the suit schedule property in O.S.No.10 of 2016, in culmination of an order passed by this Court in C.R.P.(PD) No.3290 of 2019 dated 16.10.2019 and thereupon, the District Lok Adalat, Gobichettipalayam passed an award on 15.11.2019 in favour of one Mr.A.Ravichandran, who has filed a suit for specific performance of the agreement of sale executed by Mrs.Rathileela Samuvel, defendant therein in favour of Mr.A.Ravichandran, plaintiff therein on 27.8.2015 agreeing to sell the suit property to him for a total consideration of Rs.1,20,00,000/- upon receiving a sum of Rs.50 lakhs. It is his further submission that the suit filed by the appellant/plaintiff without even impleading the decree holder A.Ravichandran in whose favour the Lok Adalat had already passed an award on 15.11.2019, should be dismissed for non joinder of parties. Secondly, when the award has already been passed by the Lok Adalat in favour of A.Ravichandran, as the matter stands settled between A.Ravichandran on the one hand and Mrs.Rathileela Samuvel, the respondent herein as the contesting parties, the appellant/plaintiff, without questioning the correctness and validity of the award dated 15.11.2019 relating to the very same property, is not entitled to legally maintain the present suit.

6. I also find merits on the submissions made by the learned counsel appearing for the second respondent. The reason being that when this Court in its order dated 16.10.2019 passed in C.R.P.(PD) No.3290 of 2019, on the basis of the consent given by both parties, referred the matter to the Legal Services Authority enabling them to send the same to Lok Adalat in the

district level to enter into compromise and to pass an award and thereafter the District Lok Adalat, Gobichettipalayam had also passed an award dated 15.11.2019, the present suit ought not to have been filed. Secondly, the subject matter of the property in I.A.No.2 of 2019 in O.S.No.27 of 2019 is also the same property involved in O.S.No.10 of 2016, which has become the Lok Adalat award dated 15.11.2019. Therefore, there is nothing to be agitated in the present suit. Hence, the civil miscellaneous appeal fails and it is dismissed affirming the order passed by the trial Court. However, considering the fact that the appellant/plaintiff has wasted the precious time of the Court, in spite of the order passed by this Court in C.R.P.(PD) No.3290 of 2019 referring the matter to the Lok Adalat and the Lok Adalat had also passed an award, this Court is inclined to impose costs of Rs.25,000/- payable by the appellant/plaintiff to the District Legal Services Authority, Erode within a period of four weeks. Consequently, C.M.P.Nos.7047, 7071 of 2020 are also dismissed.

Sd/-

Assistant Registrar(CS III)MDU

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District Judge
Bhavani, Erode District

Copy To

The Secretary, District Legal Service Authority,
Erode District.

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C.M.A.No.1127 of 2020

NR(CO)
KKV/28/08/2020

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