IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 146 of 2016

Pushpa ...Appellant/Petitioner/3rd Party

Vs

1.M.Andi Gounder ...Respondent/Respondent/ Decree Holder/Plaintiff

2.N.Krishnamoorthy ...Respondent/Respondent/ Judgment Debtor/Defendant

Prayer : Appeal filed under Order XLIII Rule 1 read with Section 104 of the Code of Civil Procedure against the order and decreetal order dated 10.02.2015 passed in R.E.A.No. 107 of 2014 in R.E.P.No. 3 of 2013 in O.S.No. 4 of 2006 on the file of Principal District Court, Krishnagiri.

For Appellant .. Mr.C.Jagadish

For Respondents .. Mr.J.Hariharan for Mr.V.Nicholas for R1

JUDGMENT

The civil miscellaneous appeal on hand is filed against the fair and decreetal order passed in R.E.A.No. 107 of 2014 in R.E.P.No. 3 of 2013 in O.S.No. 4 of 2006 on the file of Principal District Court, Krishnagiri, dated 10.02.2015.

2. The contention of the appellant is that the sale deed was executed in favour of the appellant Smt.Puspha by one Kumbalalakayan @ Kodiyappan. The sale deed was executed on 20.02.2006. The appellant became the absolute owner even before the institution of the suit by the first respondent against the second respondent for recovery of money. The suit in O.S.No.04 of 2006 was instituted on 17.03.2006 and as on the date of the

institution of the suit, the second respondent was not all the owner of the subject property, which was sold in favour of the appellant on 20.02.2006. The property was sold by Kumbalalakayan @ Kodiyappan and Senthil. The second respondent was an attesting witness in the sale deed. Thus, the learned counsel appearing for the appellant contends that the sale became absolute and is no way connected with the suit filed by the first respondent for recovery of money.

3. The suit was decreed in favour of the first respondent on 27.07.2009. The first respondent filed execution petition to attach and sold the properties mentioned in the Schedule to the execution petition. Totally, 13 items were mentioned in the Schedule to the execution petition dated 02.02.2010. In view of the fact that the property purchased by the appellant was also included in the schedule to the execution petition, the appellant was constrained to file an application under Order 21 Rule 58 CPC to conduct the adjudication.

4. The Principal District Court, Krishnagiri, adjudicated the issues with reference to the documents and the evidences filed by the respective parties. The trial Court found that the suit was instituted on 17.03.2006 and the said factum was admitted and the sale deed was executed even prior to the institution of the suit by the first respondent. Ex.P2 relating to the schedule property item Nos.9 to 12, stands in favour of the appellant. Patta was also transferred. There was no encumbrance as such with reference to the documents produced by the appellant before the trial Court. The trial Court admitted that there was no fraudulent transfer of property and there was no evidence available to establish any such fraudulent transaction both on the side of the vendor and the purchase. However, the trial Court made an observation that it is a joint-family property and, therefore, the judgment debtor is having interest over the property which was sold in favour of the appellant and, accordingly, allowed the petition in-part excluding the portion of the properties in Item Nos. 9 to 12 in schedule to the execution petition. More specifically, the trial Court held that the second respondent N.Krishnamoorthy is having interest over the properties in Item Nos. 9 to 12 which was sold in favour of the appellant. Thus, the petition was allowed in-part confirming the attachment with reference to the shares to be allowed in favour of the second respondent - N.Krishnamoorthy.

5. Learned counsel appearing for the first respondent objected the said contention by stating that the suit was

decreed on merits for a sum of Rs.5,37,000/- (Rupees Five Lakhs and thirty seven thousand only) with interest at the rate of 9% per annum and the execution petition was filed for sale of properties consisting of 13 items. The appellant filed an application under Order 21 Rule 58 CPC to adjudicate the claim in respect of Item Nos. 9 to 12 and the attachment to the said items. The trial Court has rightly restricted the attachment with reference to the two-third share in which the second respondent/N.Krishnamoorthy is having interest. Thus, there is no infirmity as such in the judgment and the civil miscellaneous appeal is to be dismissed.

6. Admittedly, the decreed amount was Rs.5,37,000/- (Rupees Five lakhs and thirty-seven thousand only) along with the interest at the rate of 9% per annum. The rough calculation of the interest as of now would indicate that the total decree amount approximately would be a sum of Rs.10,75,000/- (Rupees Ten Lakhs and Seventy-five thousand only).

7. Learned counsel for the appellant states that the properties mentioned in the schedule Item Nos. 1 to 8 and 13 are sufficient to realize the decree amount as the said property value increased. Even during the year 2009, the value of the properties in Item Nos. 1 to 8 and 13 was about Rs.9,50,000/- (Rupees Nine Lakhs and Fifty Thousand only) even as per the decree holder. Therefore, now the value will be far more than that of the value assessed in the year 2009 and there is no necessity to continue the attachment in respect of Item Nos. 9 to 12 in order to realize the decree amount. It is further contended that when there is no fraudulent transaction which was established by the respondents before the trial Court, there is no reason to restrict the attachment. Unless the respondents establish that the sale of Item Nos. 9 to 12 in favour of the appellant was on fraudulent means, the attachment cannot be restricted and the petition ought to have been allowed by the trial Court. It is further contended that the restriction imposed by the trial Court is contrary to the facts and circumstances and further the respondents could not be able to establish that the sale deed executed on 20.02.2006 in favour of the appellant was fraudulent.

8. This being the factum established, this Court is of the considered opinion that the trial Court has committed an error in not considering the fact that the value of the properties mentioned in Item Nos. 1 to 8 and 13 in schedule to the execution petition is more than sufficient to realize the decree amount and further not considered the fact that the sale deed

was executed in favour of the appellant on 20.02.2006 even before the institution of the suit in O.S.No. 04 of 2006 on 17.03.2006. Thus, the fair and decreetal order dated 10.02.2015 passed in R.E.A.No. 107 of 2014 in R.E.P.No. 3 of 2013 in O.S.No. 4 of 2006 is set aside and consequently, C.M.A.No. 146 of 2016 stands allowed. No costs. C.M.P.No. 1244 of 2015 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssm

To

The Principal District Judge,
Krishnagiri.

+1cc to M/s.C.Jagadish, Advocate Sr.10921

C.M.A.No. 146 of 2016

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