

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.273 of 2015

and

M.P No.1 of 2015

Seenuvasan

..Appellant/petitioner

Vs.

1.S.Thirumalai

2.Pattabi

..1 & 2 Respondents/

1 & 2 respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC, is filed against the impugned order dated 13.08.2014 passed by the District Judge at Tiruvannamalai whereby the obstruction petition E.A.No.4 of 2012 in E.P.No.56 of 2008 in O.S.No.64 of 2007 filed by the appellant under Order 21, Rule 97 of C.P.C., was dismissed and order of delivery was made in R.E.P.No.56 of 2008 in O.S.No.64 of 2007 in favour of the second respondent.

For Appellant : Mr.R.Pradeep

For Respondents : Mr.P.Jagadeesan for R2
: No representation of R1

J U D G M E N T

The fair and decreetal order dated 13.08.2014 passed in E.A.No.4 of 2012 in E.P.No.56 of 2008 in O.S.No.64 of 2007, is under challenge in the present civil miscellaneous appeal.

2. The learned counsel appearing for the appellant mainly raised a ground that the appellant is not a party to the civil suit in O.S.No.64 of 2007 which was instituted by the second respondent for specific performance. It is contended that the appellant had no knowledge about the decree passed in O.S.No.64 of 2007. Thus, he has no ambition to challenge the decree passed by the competent Civil Court of law. Thus, he has raised an objection by filing E.A.No.4 of 2012, as E.P.No.56 of 2008 was allowed in favour of the decree holder.

3. The learned counsel appearing for the second respondent contended that the suit for specific performance decreed in

favour of the second respondent who in turn filed E.P.No.56 of 2008 which was allowed by the Trial Court and the sale deed was also executed in his favour. However, the fact remains that the suit for specific performance was decreed in favour of the second respondent on 07.02.2008 in O.S.No.64 of 2007. The first respondent S.Thirumalai who is the defendant in O.S.No.64 of 2007 is none other than the brother of the appellant and along with his mother and sister, the first respondent entered into a partition deed on 07.07.2009. With this background, the appellant has filed E.A.No.4 of 2012 on the ground that the partition deed was executed between the family members.

4. The Trial Court made a categorical finding that the said partition deed dated 07.07.2009, is obviously hit by its pendency and lack of bonafide. The appellant had not let in any oral evidence and marked documents to substantiate his case in respect of the suit property. Based on the fact that the appellant had not produced any document or let in evidence established his right over the suit property, the E.A. was dismissed.

5. This Court is of the considered opinion that prima facie the fact admitted is that the suit in O.S.No.64 of 2007 for specific performance was decreed on 07.02.2008 in favour of the second respondent. The subsequent application filed to set aside the exparte decree was also dismissed at the condone delay stage. Thereafter, on 07.07.2009, the first respondent along with his family members executed a partition deed. Thus, it is obviously made clear that in order to fructify the decree, such arrangements would have been made by the first respondent along with the family members. There is every reason to believe that the action of the first respondent is not bonafide.

6. Thus, this Court is of the considered opinion that the findings of the Trial Court is in consonance with the well established principles. The idea of the litigants to prolong and protract the issues can never be encouraged by the Courts. Once the rights are crystalised and parties are slept over the rights for many years, then they cannot wake up and knock the doors for the purpose of disturbing the settled rights in respect of the decree holders. Such practices have to be deprecated. The Courts must be cautious while entertaining such petitions filed by the litigants in order to dilute the civil rights established in a competent Court of law.

7. These being the principles to be adopted, the reasonings furnished by the Trial Court in the present case are certainly candid and convinced and there is no perversity as such. Thus, this Court is not inclined to interfere with the order passed by the Trial Court.

8. Accordingly, the fair and decreetal order dated 13.08.2014 passed in E.A.No.4 of 2012 in E.P.No.56 of 2008 in O.S.No.64 of 2007 stands confirmed and consequently, C.M.A.No.273 of 2015 stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar

gsk

To
The District Judge,
Tiruvannamalai.

Copy to
The Section Officer
VR Section
High Court, Madras-104

C.M.A.No.273 of 2015
and
M.P No.1 of 2015

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