

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.25 of 2012
and
M.P.No.1 of 2012

N.G. Deivasigamani

.. Appellant

Versus

1.Saranya
2.Minor Sowmiya
3.K.M. Balasubramaniam
(minor represented by next friend
and mother savithri)

.. Respondents

Prayer: Civil Miscellaneous Second Appeal filed under Order 21 Rule 58 r/w under Section 100 of the Code of Civil Procedure, against the judgment and decree of the Principal District Judge Court at Erode, dated 18.04.2012 in A.S.No.108 of 2011 reversing the judgment and decree of the Subordinate Judge Court at Perundurai, dated 28.09.2011 in E.A.No.56 of 2010 in E.P.No.61 of 2009 in O.S.No.801 of 2000.

For Appellant : Mr. V.P. Sengottuvel

For Respondents: Mr. V. Kadhivelu, for RR1 & 2
Mr. N. Manokaran, for R3

J U D G M E N T

The judgment and decree dated 18.04.2012, passed in A.S.No.108/2011, is under challenge in the present Civil Miscellaneous Second Appeal. The facts in nutshell are that the third respondent borrowed a sum of Rs.1,00,000/- from the appellant under a promissory note on 01.08.1999. On account of the default committed by the third respondent in repaying the borrowed amount, the appellant filed O.S.No.801/2000, on 17.10.2000. The suit was decreed ex-parte on 01.08.2007. The appellant/plaintiff filed E.P.No.61/2009 on 01.11.2007. Interestingly, on 14.03.2008, the respondents 1 and 2 who are

none other than the daughters of the third respondent filed O.S.No.26/2006 for partition claiming 2/3 shares as the property in question is an ancestral property. After contest, the suit was decreed in favour of the respondents 1 and 2. Consequently, the respondents 1 and 2 filed E.A.No.56/2010 under Order 21 Rule 58 and Section 151 of CPC on 01.04.2010. Pending E.A., the sale was held on 09.04.2010 in E.P.No.61/2009.

2. Accordingly, the appellant decree holder purchased the property. Thus, the appellant became the owner of the property, consequent to the sale held in E.P.No.61/2009. However, the respondents 1 and 2 aggrieved from and out of the sale held in E.P.No.61/2009 filed an appeal in E.A.No.56/2010, which was dismissed on 28.09.2011. Thus, the respondents 1 and 2 again filed A.S.No.108/2011, before the Principal District Court, Erode and the said appeal suit was allowed on 18.01.2012, on the ground that the respondents 1 and 2 being the coparceners are entitled to 2/3 shares in property as per the decree in O.S.No.26/2006. The third respondent/judgment debtor had utilised the funds for the illegal and immoral purposes. He had not utilised the amount for the family necessity. Thirdly, the respondents 1 and 2 being the daughters have no bias obligation during the life of their father / first respondent. Based on these grounds, the Principal District Court, allowed the appeal suit filed in A.S.108/2011. The third respondent questioned the judgment and decree passed in O.S.No.26/2006 in A.S.No.582/2008. The said appeal suit was disposed of by the Hon'ble Division Bench of the Madras Court, which is reported in 2018 1 MWN (Civil -para 7). The Hon'ble Division Bench dismissed both the appeal suit in A.S.No.582/2008 as well as the Cross Objection No.10/2009, confirming the judgment and decree dated 14.03.2008, made in O.S.No.26/2006. During the pendency of A.S.No.582/2008, the third respondent filed E.A.No.91/2010 under Order 21 Rule 90 to set aside the sale, which was allowed on 27.04.2014. The sale held on 09.04.2010, was set aside. Against the said judgment, the appellant filed CMA.No.32/2014 before the First Additional District Court, Erode and the said CMA was dismissed on 17.10.2019.

3. In view of the above litigations, the rights of the respondents 1 and 2, who are the daughters of the third respondent stood confirmed. The sale made in favour of one Mr.Chinniappan, auction purchaser was set aside. The rights of the respondents 1 and 2 are confirmed by the Court. This being the factum established, the present appeal deserves no further consideration on merits as the sale itself has gone. In other words, when the sale was set aside by the Court, which was made to reliaise the decree amount, the further appeals on the said ground would not arise at all. This being the factum, the cause arises for the purpose of filing the present second appeal did

not exist. Thus, the CMA stands disposed of as infructuous. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

1.The Principal District Judge Court,
Erode.

2.The Subordinate Judge Court,
Perundurai.

+1 cc to M/s.V.Kathivelu, Advocate Sr.No. 7401

+1 cc to M/s.V.P.Sengottuvel, Advocate Sr.No. 6743

+1 cc to M/s.N.Manokaran, Advocate Sr.No. 6764

C.M.S.A.No.25 of 2012 and
M.P.No.1 of 2012

SSI (CO)

RMP (03/03/2021)



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