

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1176 of 2014
and
M.P.No.1 of 2014

Vairavel

.. Appellant

Vs.

1.Shanmuga Gounder (Died)
2.Kaliammal
3.Pechimuthu
4.Balasubramanian
5.S.Nagaraj
6.S.Sundararajan
7.Anans.Anandhakumar
8.S.Krishnaswamy
9.S.Ganesh

... Respondents

(R2 to R9 brought on record as LRs of the deceased sole respondent viz shanmugha gounder vide court order dated 01.03.2021 CMP No.16200 to 16202/2017 in CMA No.1176 / 2014 (TVTSJ)

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 Rule 1(r) of Civil Procedure Code, against the fair and decreetal order dated 20.12.2013 made in E.A.No.4 of 2013 in E.P.No.3 of 2012 in O.S.No.836 of 2004 on the file of the learned III Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.R.I.Ramesh

For Respondents

For R1 : Died

For R2 to R9 : No appearance

J U D G M E N T

The appellant herein is the petitioner in E.A.No.4 of 2013 and Judgment debtor in E.P.No.3 of 2012 and defendant in

O.S.No.836 of 2004 on the file of the learned III Additional and Sessions Judge, Coimbatore.

2. The suit was filed by the plaintiff in O.S.No.836 of 2004 for the relief of specific performance and the same was decreed in favour of the plaintiff. After a decree the respondent/plaintiff has taken steps to execute the decree for delivery of possession of the suit property. In the execution proceedings the judgment debtor received summons since 2012. When the case was proceeded for hearing the learned counsel for the appellant stated that he did not note the correct hearing date, on 17.01.2013 suddenly the case was called and the appellant was set as remained ex-parte and order of delivery was passed on 28.02.2013. The appellant came to know about the ex-parte order only on 11.02.2013, when the amin came to the suit property for taking delivery of the property. Hence, he filed a petition to set aside the ex-parte order immediately. The learned counsel for the respondent / plaintiff contested that the said application stated that to drag on the matter, the appellant purposely remained ex-parte, and in order to block the process of the delivery he filed the application without any basis.

3. The trial judge on hearing both sides concluded that the appellant totally mis represented the facts and blamed the plaintiff without any substance of truth and also observed that based upon the decree passed in the year 2006, sale deed was executed on 27.07.2011. Accordingly, petition stands dismissed. Aggrieved by the said order the appellant / defendant has preferred this appeal.

4. The facts reveals that the suit was decreed on 18.07.2006 on merits and sale deed was executed on 27.07.2011. Thereafter, execution application was filed, notice also ordered and Mr.K.Balasubramaniam, learned counsel filed vakalat for the appellant and the time was given to file his counter statement as he has not filed counter on 03.01.2013, the judgment debtor was set ex-parte and orders were passed on 17.01.2013. But, suppressing this fact the appellant filed this affidavit stating as if the case was suddenly taken up on 17.01.2013 and he was set as ex-parte.

5. As discussed above, the appellant appeared through his counsel before the executing Court and time also given to submit his counter objections. But, he avoided purposely so there is no truth in his averments as discussed by the trial Judge. The conduct of the appellant shows that he

wanted to drag on the proceedings. The person who suppressed the real fact before the Court is not entitled to get a remedy by abusing the process of Court, therefore the reason stated by the Trial Judge is justifiable one.

6. Hence, learned III Additional and Sessions Judge, Coimbatore rightly concluded this aspect, which does not warrant any interference by this Court.

7. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently connected Civil Miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

rri

To

The III Additional District and Sessions Judge,
Coimbatore.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Praveen Kumar, Advocate SR.No.20677

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SMI (CO)
GMY (04/06/2021)