



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Thursday, the Twenty Second day of July Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE M.SUNDAR

CMP.No.22155 of 2019

in SA.NO.1026 of 2019

S.GNANAMBAL

[PETITIONER]

Vs

R.GOVINDARAJ

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the decree and judgment dated 12-06-2019 in AS NO.22 of 2016 on the file of Principal District Judge, Tiruvannamalai Tiruvannamalai District confirming the decree and judgment dated 29-02-2016 in OS.NO.3 of 2013 on the file of Principal Subordinate Judge, Sub Court, Tiruvannamalai, Tiruvannamalai District(in CMP.No.22155/2019)pending disposal of the SA.NO.1026/2019

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.RAJARAJAN, Advocate for the petitioner and of MS.A.DHANWANTHI, ADVOCATE for MR.K.KOVIGANESAN, ADVOCATE for the Respondent the court made the following order:-

Read this in conjunction with and in continuation of separate proceedings made in captioned second appeal, which reads as follows:

'Mr.R.Rajarajan, learned counsel on record for appellant and Ms.A.Dhanwanthi, learned counsel representing the counsel on record for lone respondent are before this Virtual Court.

2. Case file placed before this Court brings to light that captioned second appeal has been admitted by Hon'ble predecessor judge on 17.10.2019.

3. Suit in the trial Court is primarily for declaring as void and not binding on the plaintiff a settlement deed dated 10.06.2007 executed by defendant's husband in her favour. After full contest, suit was decreed by the trial Court in and by judgment and decree



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dated 29.02.2016. The defendant carried it in appeal by way of a regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' ('CPC' for the sake of brevity) and the first appeal also came to be dismissed by the first Appellate Court by judgment and decree dated 12.06.2019 confirming the decree of the trial Court. Thus, the defendant is before this second appeal Court.

4. The admission proceedings/orders of Hon'ble predecessor judge dated 17.10.2019 reads as follows:

'Learned counsel for the appellant/defendant has submitted that the respondent herein had filed a suit stating that the appellant's husband had executed the settlement deed dated 10.06.2007 in favour of the appellant with a view to defraud the creditors, but he has not added the appellant's husband as defendant in the suit. He further submitted that the respondent has also taken a plea that since the suit property is the co-parcenary property, without the consent of other co-parceners, the husband of the appellant had executed the settlement deed in favour of the appellant and on that ground also, the said settlement is void, but the respondent being a stranger, he cannot raise the said point. He further submitted that even though in the plaint, the respondent has stated that the settlement deed was executed on 10.06.2007, he has filed the suit only in the year 2013. He further submitted that as per Section 53 of the Transfer of Property Act, any transfer made with a view to defeat the right of the creditors, the said transfer is a voidable one and in such a case, the suit has to be filed within three years from the date of transfer, but in this case, the suit was filed after six years and on that ground also, the suit is liable to be dismissed. But the courts below erroneously upheld the claim of the respondent/plaintiff and therefore, the substantial questions of law have arisen in this case.

2. Considering the aforesaid submission and also perusing the judgments of the courts below and appeal memorandum, this second appeal is admitted.

3. The following substantial questions of law are formulated:

'i) Is not the first appellate court wrong in law by confirming the decree and judgment by



3. In this view of the matter, a stay of the decree and judgment of the Courts below is untenable as it is a decree declaring a settlement deed as null and void. Therefore, captioned CMP is disposed of as closed preserving the rights of the petitioner/appellant to take out a suitable CMP with a suitable prayer in the days to come if so advised and if the need arises.



4. CMP disposed of in the aforesaid manner preserving the rights and liberties of petitioner/appellant. Though obvious, all the rights and contentions are left open in this regard. In other words, all questions are left open. There shall be no order as to costs.

-sd/-

22/07/2021

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT JUDGE,
TIRUVANNAMALAI,
TIRUVANNAMALAI DISTRICT.

2 THE SUBORDINATE JUDGE,
TIRUVANNAMALLAI,
TIRUVANNAMALAI DISTRICT.

Order
in
CMP.No.22155 of 2019
in SA.NO.1026 of 2019

Date :22/07/2021

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