



C.M.S.A.No.12 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 25.02.2022

C O R A M :

The Hon'ble Mrs. Justice J.NISHA BANU

C.M.S.A.No.12 of 2010
and M.P.No.1 of 2010

M.M.Babu

... Appellants/Appellant/
Petitioner/Claimant/3rd Party

Vs

1.Indian Bank, Erode
represented by its
Senior Branch Manager
Gandhiji Road Branch
Erode.
2.M/s Ponnappa Textiles, Erode
Represented by its
Managing Director
M.P.Munusamy
3.M.P.Munusamy
S/o M.G.Ponnappa Mudaliar
4.M.M.Thiruvenkadam @ M.K.Thiruvadanam
S/o M.P.Munusamy
5.M.Kumar
S/o M.P.Munusamy
6.M.Ponnurangam
S/o M.P.Munisamy
7.Reliance Assets Reconstruction Co. Ltd.,
Reliance Centre, 6th Floor, North Wing Office
Western Express High Way, Santacruz East
Mumbai – 400 055.



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(RR7 impleaded vide order dated 03.02.2021 made in C.M.P.No.11573 of 2020)

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... Respondents 2 to 6/Judgment debtors/Defendants

Prayer:- Civil Miscellaneous Second Appeal filed under Section 100 read with Order 21 Rule 58 CPC., against the Judgment and decree dated 06.04.2010 made in A.S.No.108 of 2009 on the file of Principal District Court, Erode, confirming the Judgment and decree dated 08.06.2009 made in E.A.No.219 of 2007 in E.P.No.311 of 2004 in O.S.No.27 of 2002 on the file of the First Additional Sub Court, Erode.

For appellant : Mr.N.Manokaran
For respondents :Mr.Kalyanaraman
for M/s Aiyar & Dolia for R1
Mrs.V.Srimathi
for Mr.V.Raghavachari for RR3 to 6

JUDGMENT

This civil miscellaneous second appeal is filed by the 3rd party/claimant as appellant.

2.Originally suit in O.S.No.27 of 2002 was filed by the Indian Bank/1st respondent herein. The plaintiff-Bank sought recovery of



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Rs.3,43,439.40 along with 15% interest from the respondents failing which the property mentioned in schedule to be sold in auction towards recovery. The said prayer was allowed by the trial court granting preliminary decree vide judgment dated 24.01.2003. Final decree has also been passed in favour of the Bank on 25.03.2004.

3. Thereafter, E.P.No.311 of 2004 has been filed by the Bank for recovery of the amount along with interest for which auction of the property of the respondents in respect of the suit schedule property was sought.

4. In the said E.P., E.A.No.219 of 2007 has been filed by the appellant herein as claimant, claiming that he is son of the 3rd respondent and brother of respondents 4 to 6 and he is entitled to the share in the suit schedule property and the said property is the ancestral property of respondents 2 to 6. Therefore, for the debt borrowed by respondents 2 to 6 from the 1st respondent Bank, the said property cannot be made liable and that he is entitled to 2/3rd share in the petition mentioned property.



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5.The said E.A., filed by the claimant has been dismissed by order dated 08.06.2009. As against the order passed in E.A.No.219 of 2007 in E.P.No.311 of 2004 in O.S.No.27 of 2002, the appellant/claimant filed A.S.No.108 of 2009. The appellant/claimant filed the said Appeal Suit seeking to release the schedule petition mentioned property from the execution proceedings in E.P .No.311 of 2004 in O.S.No.27 of 2002.

6.The appellant's contention before the 1st appellate court was that the decree was obtained without impleading the 1st respondent and it would amount to fraud and mis representation and therefore, the decree is not a valid one.

7.The said contention was resisted by the decree holder by submitting that debt created by the head would also binding on the appellant.

8.The learned Judge, held that appellant is a member of the undivided Hindu family constituted by the 3rd respondent and is residing with respondents 3 to 6. The mortgage loan obtained by the 2nd respondent was utilized for the welfare of the joint family and every member of the family is



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liable to pay the debts borrowed by the Kartha of the family. The lower court

came to a conclusion that though the appellant has got 2/30 share as per Ex.P.1

he has an obligation to discharge the said debt, obtained by the 3rd respondent as Managing Director of the 2nd respondent and the prayer for excluding the 2/30 share of the appellant from the execution proceedings cannot be granted and the findings of the lower court is perfectly valid and no interference is called for.

9.On the above said findings, the learned Judge, dismissed the Appeal Suit and confirmed the order passed in E.A.No.219 of 2007 in E.P.311 of 2004 in O.S.No.27 of 2007.

10.This court is in complete agreement with the findings of the learned Judge and finds no merit in the present Civil Miscellaneous Second Appeal. Accordingly, the appeal is dismissed. No costs. MP is closed.

25.02.2022

nvsri



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To

- 1.The Principal District Judge, Erode,
- 2.The First Additional Sub Judge, Erode.



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J.NISHA BANU, J.
nvsri

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