



C.M.S.A.No.30 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 01.04.2022

C O R A M :

The Hon'ble Mrs. Justice J.NISHA BANU

C.M.S.A.No.30 of 2015
and M.P.No.1 of 2015

1.Poonkodi

2.Saraswathi

3.Brammadevi

..Appellants/Claimants

Vs

1.Nagarajan

..Respondent No.1/Petitioner

2.Beema Gounder

3.Mahadevan

4.Boomiyammal

..Respondents/JDS/

2 to 4 Defendants.

Prayer:- Civil Miscellaneous Second Appeal filed under Order XXXXIII

Rule 1 and Section 100 C.P.C., against the order dated 02.06.2015 passed

in C.M.A.No.17 of 2014 on the file of Principal District Judge,

Villupuram, filed against E.A.No.247 of 2011 in E.P.No.171 of 2009 in

O.S.No.169 of 1999 dated 08.07.2014 on the file of Principal Sub Judge,

Tindivanam.



C.M.S.A.No.30 of 2015

WEB COPY

For appellants : Mr.A.Paneerchelvam

For respondents : Mr.R.Sunil Kumar for R1

Not ready in Notice for R3 and R4.

JUDGMENT

The appellants herein are the petitioners in C.M.A.No.17 of 2014 and also petitioners in E.A.No.247 of 2011. This CMSA is filed as against the order dated 02.06.2015 passed in the said C.M.A., whereby, the learned Judge, dismissed the appeal filed by the appellants herein/petitioners and confirmed the order passed in E.A.No.247 of 2011 in E.P.No.171 of 2009 in O.S.No.169 of 1999 dated 08.07.2014.

2. The appellants herein as claimants claimed share in the petition mentioned property which was brought for sale in the court auction. But the said claim was rejected before the trial court in O.S.No.169 of 1999. Before the Executing court, petitioners filed E.A.No.247 of 2011 to stay the delivery by the Executing Court in E.P.No.171 of 2009 which was also dismissed. Against which,



C.M.S.A.No.30 of 2015

CMA.No.17 of 2014 was filed by the appellants/petitioners stating that the appellants/petitioners are entitled to a share in the suit property.

3. The learned Judge, after going through averments of the petitioners, counter filed by the respondents, trial court decree, order passed in E.A., pointed out that the petitioners filed the claim application in the execution proceedings at the stage of recording of delivery of the petition mentioned properties in favour of the Decree holder/1st respondent. The properties were already auctioned in E.P.171 of 2009 and sale certificate was issued on 20.07.2009 in favour of the 1st respondent/decree holder.

4. The learned Judge, held that the 1st respondent is the Judgment debtor in E.P.No.171 of 2009 in O.S.No.169/1999. Originally O.S.No.169 of 1999 was filed by one Vadamalai Gounder against respondents 2 to 4 for recovery of money on the basis of a promissory note executed by 2 to 4 respondents in favour of Vadamalai Gounder and the said suit in O.S.No.169 of 1999 was decreed in favour of the said



C.M.S.A.No.30 of 2015

Vadamalai Gounder and on the basis of the decree Vadamalai Gounder filed the Execution Petition No.45 of 2000 as against the respondents 2 to 4 for the sale of the petition mentioned property. Since the respondents 2 to 4 did not file any objection, the property was brought for sale in the court auction which was held on 28.09.2005 and the 1st respondent purchased the property in the court auction and he was the successful bidder and auction purchaser of the petition mentioned properties and auction purchaser / 1st respondent had deposited the entire sale amount into the court and sale receipt was executed in favour of the 1st respondent and it was registered in the Sub-Registrar Office. Subsequently, based upon the sale certificate, the 1st respondent had filed E.A.No.171 of 2009 for delivery of the suit properties through court and when it was posted for recording of delivery, claimants have filed claim petition to stay the recording of delivery by the Executing Court.

5. A perusal of records would go to show that 2nd respondent is the owner of the suit properties and the claimants are the daughters of the



C.M.S.A.No.30 of 2015

2nd respondent and other respondents are his son and wife. Since the promissory note was executed by the 2nd respondent for the benefit of the joint family members, the appellants/petitioners' claim over share of the petition mentioned property deserves no merit.

6. The learned Judge, in the order dismissing the CMA.No.17 of 2014, categorically held that the trial court has given a findings that the petition mentioned properties were not purchased out of the income of the joint family property, hence, the petition under Order 21 Rule 97 C.P.C. was dismissed as not maintainable. The learned Judge, further held that the claimants did not prove that the petition mentioned properties are purchased out of the nucleus of the ancestral joint family properties and therefore, the findings given by the court below in dismissing the petition is found to be correct.

7. This court do not find any merit in this Civil Miscellaneous Second Appeal and the appeal is liable to be dismissed. The findings of the learned Judge is well reasoned. The appellants herein who could not



C.M.S.A.No.30 of 2015

prove their case before the trial court, filed E.A., claiming that the delivery of petition mentioned property is not maintainable, which has been dismissed by the Executing Court as well as appellate court. The concurrent findings of the courts below holds good. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

01.04.2022

nvsri

To

- 1.The Principal District Judge, Villupuram,
- 2.The Principal Sub Judge, Tindivanam.



WEB COPY



C.M.S.A.No.30 of 2015

J.NISHA BANU, J.

nvsri

C.M.S.A.No.30 of 2015

01.04.2022