



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Twenty First day of April Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR

WEB COPY

CMP(MD) No.6935 of 2020

IN

CMA(MD) No.1077 of 2016

PANCHAVARANAM

... PETITIONER/1st RESPONDENT

Vs

1 SARATHAMANI DEVI
REP.THROUGH POWER AGENT
VEERAPANDIAN

... 1st RESPONDENT/APPELLANT

2 RAMAIAH (DIED)

... 2nd RESPONDENT/2nd RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to recall the order passed by this Honourable court dated 01.10.2020 in above CMA(MD)No.1077 of 2016.

PRAYER IN CMA(MD)No.1077 of 2016:

Pleased to set aside the remand back order in judgment and decree passed in A.S.No.22 of 2014 dated 30.03.2016 on the file of the Learned District Judge, Sivagangai setting aside the Judgment and Decree passed in O.S.No.79 of 2011 on the file of the Learned Subordinate Judge, Devakottai.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.M.SHAKUL HAMEED, Advocate for the petitioner and of Mr.K.CHOCKALINGAM, Advocate on behalf of the Respondents, the court made the following order:-

This petition is filed to recall the order passed by this Court on 01.10.2020 in C.M.A. (MD) No.1077 of 2016.

2. Heard Mr.M.Shakul Hameed, learned counsel for the petitioner and Mr.K.Chockalingam, learned counsel for the respondents.

3. This Court has earlier passed an order dated 01.10.2020 in C.M.A. (MD) No.1077 of 2016. After hearing the elaborate arguments of both sides, this Court was not inclined to accept the arguments on the side of appellant. It was submitted by the learned counsel for the respondents in this appeal that his client has agreed to withdraw the suit. It is in this context, this Court passed the following order:



"2. Though the suit is for permanent injunction, the first respondent claim title through her husband, by name, Ramiah, the second respondent herein, suppressing the fact that the property itself was purchased by the appellant in the year 1981. Though the title of appellant was admitted by Ramiah in several proceedings, particularly, in the document, styled as Cancellation of settlement, the first respondent has not even disclosed the nature of settlement and sought for any prayer to set aside the cancellation of settlement deed.

3.It is also admitted that the second respondent is a party to the cancellation of settlement, wherein, the first respondent husband had categorically admitted that the suit property in property of appellant, ie., his first wife and that he had executed the settlement deed in favour of the first respondent by mistake The document cancelling the settlement is not challenged in any proceedings sofar.

4. The contention of the respondents is that the property was originally attached in a suit filed against the respondent's husband, Ramiah. It is admitted that the property was never sold in any Court auction. Merely because, the husband of first respondent was added as a party in a suit and the properties were attached in execution of a decree, that was passed against the husband of first respondent, that does not mean that the first respondent's husband could claim title to the suit property.

5.Since the claim of title is contrary to the records and suppressing material facts, the suit initiated by the respondents for permanent injunction on the basis of title, is nothing, but an abuse of process of law. The first respondent, who is also the second wife of Ramiah, knew that the property belongs to the appellant, the first wife of Ramiah and that her husband had no right or interest over the property. Being a party to the cancellation of settlement deed, the first respondent has also acknowledged the right, title and interest of the appellant over the suit property.

6. In these circumstances, the application filed by the appellant for rejection of plant is in accordance with law and the lower Court has rightly allowed the application. Since the application filed by the appellant under Order VII Rule 11 CPC was allowed, even without hearing the appellant, the learned District



Judge, Sivagangai, on the appeal preferred by the respondents, remitted the matter to the lower Court to pass fresh orders on merits. preferred. Challenging the said order, the present appeal is preferred.

7. This Court is in agreement with the learned Counsel for the appellant that the suit is vexatious. When the facts are not disputed, giving opportunity to the respondents is only an empty formality. The respondents, who have no semblance of right over the property, filed the vexatious litigation claiming title under the second respondent, who had acknowledged the title of appellant in prior proceeding and by other documents. The attitude of the respondents to make the property litigious is evident from the facts and events recorded by this Court in the earlier paragraphs.

8. After elaborate arguments with reference to the various documents and admitted documents, the learned Counsel for the F respondents submitted that his client has agreed to withdraw the Having regard to the facts and circumstances of the case and the conduct of the respondents, this Court is of the view that the respondents may again play some tricks by approaching the Civil Court once again for different relief by setting up title or creating documents in favour of third parties. Therefore, this Court insists that the first respondent should file an affidavit to the effect that she has no claim whatsoever over the suit property and that she regrets for what she had done by claiming title falsely. to the suit property. In case, the affidavit of under taking is not filed by the first respondent, as expected by this Court, this Court is inclined to allow this appeal with heavy cost to be saddled on the respondents."

4. It is only on the representation of the learned counsel for the respondents that he would withdraw the suit and file an affidavit of undertaking to that effect, this Court instead of allowing the appeal, adjourned the matter for filing affidavit of undertaking. Nearly after 2 ½ years, the first respondent in the appeal has come before this Court with a petition to recall the order on the ground that facts recorded by this Court are contrary to records and that the counsel for the appellant has mislead this Court.

5. It is to be pointed that the petition to recall the order is not maintainable for the reasons stated in the affidavit filed in support of the petition. It is to be noted that the order passed by



because the facts found in the order are not borne out from the records.

6. It is open to the petitioner to file a review application if there is error apparent on the face of record. However, the petitioner has filed a petition to recall the order on the ground that the facts which are stated in the order are not accurate. The averments found in the affidavit are contumacious and this only shows that the petitioner has scant regard for the Court. Since the petition is not maintainable, this Court is not inclined to go further. Accordingly, the Civil Miscellaneous Petition is dismissed.

sd/-
21/04/2022

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/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE DISTRICT JUDGE,
SIVAGANGAI.
- 2 THE SUBORDINATE JUDGE,
DEVAKOTTAI.

ORDER

IN

CMP (MD) No.6935 of 2020
IN
CMA (MD) No.1077 of 2016
Date :21/04/2022

SA/JM/SAR.4/27.04.2022/4P/3C