



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
16.03.2022	24.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A (MD)No.913 of 2021

and

C.M.P (MD)No.8590 of 2021

Nagasundari

... Appellant/Petitioner/
3rd Party/3rd Party

vs

1.Shankunthala

... 1st Respondent/1st Respondent
1st Respondent/Petitioner/
Plaintiff

2.Tamilselvi

... 2nd Respondent/2nd Respondent/
2nd Respondent/Respondent/
Defendant

3.Murugan

... 3rd Respondent/3rd Respondent/
3rd Respondent/Auction Purchaser/
3rd Party/3rd Party

PRAYER: Civil Miscellaneous Appeal filed under Order 41 Rule 1 of Code of Civil Procedure, to set aside the fair order and Ex.order dated 24.08.2021 passed in E.A.No.5 of 2021 in E.A.No.3 of 2020 in E.P.No.54 of 2019 in O.S.No.84 of 2017 on the file of the Additional District (Fast Track Court), Theni and allow this appeal.

For Appellant	: Mr.C.Lakshmanan
For R1	: No appearance
For R2	: Mr.K.Guhan
For R3	: Mr.M.Saravanakumar

JUDGMENT

The unsuccessful third party is the appellant herein. She has not presented her case before the trial Court. Hence, adverse order has been passed. Aggrieved over the same, she filed the above civil miscellaneous appeal.



2.After hearing both sides, I find that the first respondent herein filed O.S.No.84 of 2017 for specific performance of the suit sale agreement entered between the first respondent and the second respondent herein and the matter has been transferred to Lok Adalat. In L.A.C.No.653 of 201, a compromise was arrived at between the parties and as per compromise, the property was sold in public auction on 04.01.2019. The third respondent herein is the successful bidder in the said public auction and as per the records, on 05.06.2020, a sale deed was executed in his favour in E.P.No.54 of 2091. Therefore, the auction purchaser has filed E.A No.3 of 2020 for delivery of the property. When the matter was posted for delivery, the third party/claimant has filed E.A.No.5 of 2021 on the ground that in respect of the schedule property there was a Will in her favour. The Will dated 12.04.2016 is in her favour executed by her mother Kamalam. When the matter was posted for enquiry, the third party claimant has not appeared before the Court nor filed the alleged Will dated 12.04.2016 said to be executed in her favour.

3.Taking into consideration the entirety of the proceedings and the non-cooperation of the claim petitioner for several years, the Additional District Judge, at Theni has chosen to pass orders based on the records available. As per the records, there is nothing on record to demonstrate that the claim petitioner/appellant is entitled to the suit property, since she has not filed any alleged Will nor prove the Will to substantiate her claim and hence, the learned Additional District Judge, Theni has rightly dismissed the same. The said finding rendered by the trial Court does not suffer from any irregularity or illegality warranting interference. Accordingly, the Civil Miscellaneous Appeal is devoid of merits and is liable to be dismissed.

4.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Additional District (Fast Track Court),
Theni.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.M.SARAVANAKUMAR, Advocate (SR-14430[F] dated
25/03/2022)

+1 CC to M/s.C.LAKSHMANAN, Advocate (SR-14055[F] dated 24/03/2022)

JUDGMENT MADE IN
C.M.A(MD)No.913 of 2021
and
C.M.P(MD)No.8590 of 2021
Date:24.03.2022

SA(30.03.2022) 3P 6C