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C.M.S.A.No.5 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.S.A.No.5 of 2014

And

M.P.No.1 of 2014

Deivasigamani

... Appellant

Vs.

- 1.Marappagounder (Died)
- 2.Arthanarigounder
- 3.Pappal
- 4.Velumani
- 5.Indira

(R3 to R5 are brought on record
as LR's of the deceased R1
viz. Marappagounder vide Court
order dated 27.09.2023 made in
CMP Nos.7287 to 7289 of 2021 in
CMSA No.5 of 2014 by PVJ)

... Respondents

Prayer:

Civil Miscellaneous Second Appeal filed under Order 21 Rule 58 r/w. Section 100 of Civil Procedure Code against the judgment and decree dated 12.11.2013 made in C.M.A.No.14 of 2012 on the file of the learned Sub Court, Bhavani, confirming fair and decretal order dated 29.10.2012 made in E.A.No.190 of 2009 in E.P.No.267 of 2004 in O.S.No.200 of 1997 on the file of the learned Principal District Munsif Court, Bhavani.



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For Appellant : M/s.N.Manokaran

For Respondents : R1 – Died (Steps taken)
R2 – Died (Steps due)
R3 to R5 – No Appearance

J U D G M E N T

This civil miscellaneous second appeal has been filed seeking to set aside the order dated 12.11.2013 made in C.M.A.No.14 of 2012 by the Sub Court, Bhavani.

2.The brief facts of the case is that the first respondent filed a suit in O.S.No.200 of 1997 before the Sub Court, Bhavani, as against the second respondent for recovery of a sum of Rs.46,860/- and also filed I.A.No.936 of 1997 under Order 38 Rule 5 of C.P.C seeking attachment of the petition mentioned property. The second respondent/ defendant entered appearance in both original suit as well as interlocutory application and since second respondent made endorsement that he is not going to sell the petition mentioned property, the interlocutory application was closed as unnecessary on 24.12.1997. Thereafter the suit was decreed on 12.10.2000. Without knowing the decree, the appellant purchased the subject property through the power agent of the second respondent on 20.06.2003.



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3. Thereafter, the first respondent filed E.P.No.267 of 2004 for attachment and sale of the subject property for recovery of the decreed amount, in which the appellant filed E.A.No.190 of 2009 before the Principal District Munsif Court, Bhavani, to protect his rights over the property. The said E.A. was dismissed on 29.10.2012 on the ground that the alienation was made with malafide intention to deprive the rights of the first respondent/ decree holder. Challenging the same, the appellant filed C.M.A.No.14 of 2012 before the Sub Court, Bhavani and the said C.M.A. was dismissed on 12.11.2013, confirming the order dated 29.10.2012 made in E.A.No.190 of 2009. Challenging the same, this civil miscellaneous second appeal has been filed before this Court.

4. The learned counsel appearing for the appellant submitted that the endorsement made by the second respondent defendant in I.A.No.936 of 1997 was not reflected in the registration department. In the absence of any reflection or encumbrance, the appellant being the bonafide purchaser the property from the second respondent which is valid one. The mandatory procedure under Order 38 Rule 11b of C.P.C. was not followed by the first respondent and hence the order of the lower Court as well as the lower Appellate Court is perverse.



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5.The learned counsel appearing for the appellant further submitted that the appellant being the bonafide purchaser who purchased the property, his rights cannot be defeated in the absence of any restraint order. Even if there is injunction, the defendant in the suit has to be punished for the breach of injunction and not the bonafide purchaser.

6.In support of his contentions, the learned counsel appearing for the appellant relied upon the decision of the Hon'ble Apex Court reported in **(2013) 5 SCC 397 [Thomson Press (India) Limited Vs. Nanak Builders and Investors (P) Limited]**, the relevant portion of which reads as follows:

"53.There is, therefore, little room for any doubt that the transfer of the suit property pendete lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether



by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor."

7.Heard the learned counsel appearing for the appellant. There is no representation for the respondents. Considering the pendency of the civil miscellaneous second appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

8.Admittedly, the first respondent filed a suit in O.S.No.200 of 1997 before the Sub Court, Bhavani, as against the second respondent for recovery of a sum of Rs.46,860/- and along with that the first respondent also filed I.A.No.936 of 1997 under Order 38 Rule 5 of C.P.C seeking attachment of the petition mentioned property. The second respondent/ defendant entered appearance in both original suit as well as interlocutory application and since second respondent made endorsement that he is not going to sell the petition mentioned



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property, the interlocutory application was closed as unnecessary on 24.12.1997. Thereafter the suit in O.S.No.200 of 1997 was decreed on 12.10.2000. Thereafter, the second respondent appointed one S.R.Chandrasamy as his power agent and alienated the subject property in favour of the appellant on 20.06.2003.

9.If the second respondent had not given any undertaking and if the Court pass an order of attachment, then they have to comply Order 38 Rule 11 b of C.P.C. inorder to follow the mandatory procedure. However, in I.A.No.936 of 1997 filed by the first respondent under Order 38 Rule 5 of C.P.C seeking attachment of the petition mentioned property, the second respondent/ defendant had made endorsement that he is not going to sell the petition mentioned property and hence the interlocutory application was closed as unnecessary. Thereafter, the second respondent appointed one S.R.Chandrasamy as his power agent and alienated the subject property in favour of the appellant.

10.All the facts were elaborately considered by the lower Court as well as by the lower Appellate Court and arrived at a conclusion that after decree was passed on 12.10.2000, the second respondent



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appointed one S.R.Chandrasamy as his power agent and alienated the subject property in favour of the appellant on 20.06.2003 and hence the alienation was made with malafide intention to deprive the rights of the first respondent/ decree holder. Both the Courts below have rendered concurrent finding that all is not well. Hence, this civil miscellaneous second appeal is mis-conceived and the same is liable to be dismissed.

11.This civil miscellaneous second appeal is accordingly dismissed. The judgment and decree dated 12.11.2013 made in C.M.A.No.14 of 2012 by the Sub Court, Bhavani, is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

09.10.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Sub Court, Bhavani.

M.DHANDAPANI,J.

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And
M.P.No.1 of 2014**

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