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C.M.A.No.1205 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1205 of 2023
and C.M.P.No.11780 of 2023

Justin Patrick Pushparaj

...Appellant

Vs.

1.N.Chelladurai,
2.Michael Anthony,
3.Sundar,

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (ja) of the Civil Procedure Code, 1908 against the order and decretal order in E.A.No.7 of 2022 in E.A.No.4 of 2021 in E.P.No.93 of 2019 in O.S.No.33 of 2015 dated 27.04.2023, on the file of the IV Additional District and Sessions Judge, Thiruvallur @ Ponneri.

For Appellant : Mr.Sunny Sheen Akkara

For Respondents : Mr.A.Palaniappan and
Mr.K.Balaji for R1
R2 and R3 - Exparte



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J U D G M E N T

This appeal challenges the Order passed in E.A.No.7 of 2022 in E.A.No.4 of 2021 in E.P.No.93 of 2019 in O.S.No.33 of 2015 dated 27.04.2023, on the file of the learned IV Additional District and Sessions Judge, Thiravallur @ Ponneri.

2. The brief facts leading to the filing of the above appeal are as follows:

(a) The first respondent filed a Suit for Specific Performance in O.S.No.33 of 2015 dated 27.04.2023, on the file of the learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri, against the second and third respondents herein. The first respondent claimed that the second and third respondents had executed a Sale Agreement on 23.04.2012, agreeing to sell a property measuring an extent of 7029 sq.ft in Survey.No.211/1 of Manali Village. In the said Suit, the second and third respondents remained ex-parte. The learned District Judge, Thiruvallur @ Ponneri decreed the Suit and directed the second and third respondents to execute the Sale Deed in respect of the property in favour of the first respondent.



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(b) The appellant on coming to know of the decree dated 07.01.2016, filed an unnumbered I.A., in O.S.No.33 of 2015, under Section 5 of the Limitation Act to condone the delay of 604 days in filing the application to set aside the exparte decree and to implead the appellant in the Suit. The said petition was dismissed by the Order dated 11.12.2017. The appellant challenged the said Order before this Court in C.R.P(PD).No.642 of 2018. This Court by the order dated 23.02.2018, dismissed C.R.P(PD).No.642 of 2018 giving liberty to the appellant to work out his remedy before the appropriate Forum.

(c) Meanwhile, the first respondent filed E.P.No.93 of 2019 to execute the decree. He had also filed E.A.No.4 of 2021 in E.P.No.93 of 2019 seeking Police protection for execution. The appellant filed E.A.No.7 of 2022 in E.P.No.93 of 2019 under Order 21 Rule 97 of Civil Procedure Code, stating that he is in possession and enjoyment of the disputed property and neither the first respondent nor the second and third respondents have any right or title over the said property.



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(d) The learned IV Additional District and Sessions Judge, Thiruvallur

@ Ponneri dismissed the said application, primarily on the ground that an application under Order 21 Rule 97 of C.P.C., is not maintainable at the instance of an obstructer. The learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri also found that the appellant only filed Xerox copies of few documents in support of his petition.

(e) Aggrieved over the order passed by the learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri, the appellant is before this Court.

3. Learned counsel for the appellant, submitted that the appellant had taken all steps to set aside the exparte decree in favour of the first respondent; that the appellant had filed a petition in the Suit to condone the delay in filing a impleading petition and to set aside the exparte decree; that the appellant had also filed a Suit in O.S.No.272 of 2018 on the file of the learned Principal District Judge, Thiruvallur to declare the decree obtained by the first respondent as null and void and the said Suit is pending; that it cannot be



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said that the obstructer has no interest in the property; that the application filed by the obstructer is in accordance with law and it is maintainable as per the Judgments of the Hon'ble Supreme Court and this Court in several decisions. He relied upon the following Judgments (a) ***Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and another*** reported in (1997) 3 SCC 694 (b) ***N.S.S.Narayana Sarma and others Vs. Goldstone Exports (P) Ltd. and others*** reported in (2002) 1 SCC 662 (c) ***Ashan Devi and another Vs. Phulwasi Devi and others*** reported in (2003) 12 SCC 219 (d) ***Shreenath and another Vs. Rajesh and others*** reported in ***Rajesh and others*** reported in (1998) 4 SCC 543 in support of his submission. The learned counsel further submitted that since the application filed by the appellant was dismissed holding that the same is not maintainable, the appellant has to be given an opportunity to establish his title over the disputed property.

4. Learned counsel for the first respondent submitted that though the learned Judge had observed that the petition filed by the appellant was not



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maintainable, the learned Judge had discussed the merits also; that the appellant had opportunity to let in evidence but had not chosen to do so; that he had filed only Xerox copies; that the appellant is obstructing the first respondent who had obtained the decree lawfully and he is by adopting dilatory tactics to prevent the first respondent from taking possession of the property; that the learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri, therefore, rightly dismissed the application on merits stating that the appellant had not established his case in a manner known to law and therefore, prayed for dismissal of the appeal.

5. The second and third respondents remained exparte before the lower Court and hence, the appellant prayed for dispensing with notice to the second and third respondents.

6. The question in the instant appeal is:

(a) Whether the application filed by the appellant under Order 21 Rule 97 of C.P.C., is maintainable ?



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7. From the facts narrated above, it is seen that the appellant has filed various petitions including a Suit questioning the decree obtained by the first respondent. Be that as it may. It is well settled that an obstructer is entitled to file an application under Rule 21 Rule 97 of C.P.C., for the purpose of determining questions involving the right and title or interest in the property. According to the appellant, the second and third respondents have obtained a decree by collusion and therefore, it is not binding on him. It is also trite that a declaration under Section 34 of the Specific Relief Act, 1963, is an adjudication *in personam* and it binds only the parties to the Suit as per Section 35 of the Specific Relief Act, 1963. Therefore, it cannot be said that the appellant has no right to file an application under Order 21 Rule 97 of C.P.C as observed by the Hon'ble Supreme Court and this Court in several cases.

8. Further, it is seen that the reading of the order does not suggest that the learned Judge had adjudicated the issue on merits. The learned Judge ought to have given an opportunity to both the appellant and the respondents to adduce evidence in support of their rival claims. Therefore, this Court is of



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the view that the impugned order is liable to be set aside and the appellant is entitled to maintain the application filed under I.A.No.7 of 2022 in E.A.No.4 of 2021 in E.P.No.93 of 2019 in O.S.No.33 of 2015.

9. The learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri is directed to decide I.A.No.7 of 2022 in E.A.No.4 of 2021 in E.P.No.93 of 2019 in O.S.No.33 of 2015 on merits, expedite its adjudication and in any event, complete it within a period of six months from the date of receipt of a copy of this Judgment.

10. With the above observation, this Civil Miscellaneous Appeal is allowed. Consequently, the connected miscellaneous petition is closed.

10.08.2023

dk

Index: Yes/No

Neutral Citation: Yes/No



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To

1. The IV Additional District and Sessions Judge,
Thiruvallur @ Ponneri.

2. The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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