



C.M.S.A.No.2 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2023

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.S.A.No.2 of 2017

K.Selvaraj

... Appellant

Vs.

1. Malathi

2. Uma Maheswari

3. Mohanraj

4. C.Babulal

5. K.Manonmani

6. K.Thangaraj

7. T.Shanthi

(RR5 to 7 exparte. Given up)

... Respondents

Civil Miscellaneous Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in AS.No.6 of 2015 on the file of the II Additional District Court, Erode dated 12.08.2016 confirming the fair and decreetal final order dated 01.11.2016 passed in EA. No.107 of 2007 in EP.No.242 of 2005 on the file of the I Additional



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Sub Court,, Erode in O.S.No.822 of 1993 on the file of the Sub court, Salem.

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For Appellant : Mr.S.Kaithaimalai Kumaran

For Respondent : R1 to R4 no appearance
R5 to R7 given up

J U D G M E N T

This Civil Miscellaneous Second Appeal has been filed seeking to quash the judgment and decree passed in AS.No.6 of 2015 on the file of the II Additional District Court, Erode dated 12.08.2016 by confirming the fair and decreetal final order dated 01.11.2016 passed in EA. No.107 of 2007 in EP.No.242 of 2005 on the file of the I Additional Sub Court, Erode in O.S.No.822 of 1993 on the file of the Sub court, Salem.

2. It is the case of the appellant is that the Tamil Nadu Housing Board, Erode allotted the petition mentioned properties to one Kandasamy under allotment order dated 18.11.1979 and the same was handed over to the said Kandasamy. Subsequently, on 24.10.1994, the appellant and the said Kandasamy entered into an agreement, in which, the said Kandasamy agreed to sell the properties to the appellant for a sum of Rs.3 lakhs. After



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paying Rs.3 lakhs, the said kandasamy handed over the possession to the appellant. The appellant has paid installments due to the Tamil Nadu Housing Board, Erode and therefore, the said property transferred in the name of the appellant. Therefore, the appellant is the absolute owner of the petition mentioned properties.

3. Such being the factual position, the respondents have filed a suit against the appellant for recovery of Rs.1,30,800/- in O.S.No.822 of 1993 before the Sub Judge Salem. The Sub court, vide order dated 06.04.2005 allowed the suit in favour of the respondents. further, the respondent filed execution application before the same Court for bringing the petition mentioned properties for public auction in order to realise the decree amount. During pendency of the EP, the said Kandasamy died. The appellant has filed execution petition in 107 of 2007 before the I Additional Sub Court, Erode and the same was dismissed vide order dated 01.11.2014. Challenging the said order, the appellant has filed appeal suit in AS.No.6 of 2015 and the same was also dismissed vide order dated 12.08.2016 by confirming the order of the trial Court.



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4. Against the concurrent judgment of the courts below, the present appeal has been filed by the appellant, who was unsuccessful before the courts below.

5. The learned counsel for the appellant submitted that the Court below failed to appreciate the scope of the petition and the questions that arise for consideration in a proper perspective and the same vitiated the order under appeal. The learned Judge erred in dismissing the application on the ground that the appellant is aware of encumbrances in the suit schedule property prior to his purchase without considering the fact that the property had not been attached in O.S.No.242 of 2005.

6. The learned counsel further submitted that the learned Judge failed to note that the order in WP.No.26128 of 2007 this Court vide order dated 14.08.2007 directed the housing Board to execute the sale deed in favour of the petitioner based on the agreement entered with his vendor and subsequent payments of dues to the Housing Board. The Learned Judge



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ought to have considered the plight of the innocent purchaser dismissal of the petition to raise the attachment over the property in which he had been in possession from the date of purchase in without any legal reasonings. The other reasonings of the learned Judge for dismissing the petition to raise attachment of the said schedule property are per se illegal and are liable to be set aside.

7. Heard the learned ounsel for the appellant and perused the materials available on record. Though notice has been served on the respondent, there is no representtton for the respondents 1 to 4. Hence, their names have been printed in the cause list and considering the pendency of the case, this Court is inclined to dispose based on the available records.

8. Two substantial questions of law have been framed for consideration, which are extracted hereunder:

a. Whether the courts below are justified in dismissing the petition filed under Order 21 Rule 58 of Cr.P.C. To raise attachment over the property without considering the fact that



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the judgment debtor was not the owner of the property when attachment was made and the owner being the Tamil Nadu Housing Board not made a supporting party in the suit?

b. Whether the Courts below are right in holding that the appellant is a "Caveat Emptor" without considering the fact that attachment was made against a person who has no legal title on the date of attachment?

9. The appellant premises his case on Order 21 Rule 58 of the Civil Procedure Code on the basis that the judgment debtor was not the owner of the property when the attachment was made, as the Tamil Nadu Housing Board was the then owner and in the absence of the Housing Board made a supporting party in the suit, the dismissal of the petition is wholly unsustainable.

10. The execution petition has been laid in the year 2005 by the defendants on the basis of the decree obtained in Execution Petition No.242/2005 for bringing the property on auction, which according to the appellant, would not in any way bind this appellant, as he is neither a party



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to the same and that he had already purchased the property from the 7th defendant, way back in 1994 by paying valuable sale consideration and had obtained a sale deed and as the appellant had been paying the dues to the Housing Board, the property was transferred to the name of the appellant.

11. However, advertent to the materials placed on record, more particularly the order dated 13.12.1993 in I.A. No.1456/1993, the trial court held that the documents, which have been placed by the appellant are all subsequent to the judgment and decree obtained against the 7th defendant by the other defendants and further the petition having been filed subsequent to the order for auctioning the property and further the fact that prior to 2005, there is no material to infer that the appellant was the owner of the property, having purchased the same for valuable sale consideration and the statutory receipts relating to the property being only from 2007 and in the absence of defendants 2 to 6 being shown as party in the sale deed alleged to have been entered into between the appellant and the 7th defendant and the destructive stand of the appellant that on the date the 7th defendant was not the owner of the property, as the property stood in the name of the Housing Board, in



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which case, the appellant could not have entered into the sale deed with the 7th defendant, dismissed the petition against which A.S. No.6/2015 was filed.

12. The appellate court held that the allegation of the appellant that he had entered into the sale deed with the 7th defendant and in the absence of Housing Board being made a party to the suit, on which date, the Housing Board was the owner of the property, cannot be accepted for the reason that the sale deed alleged to have been entered into with the 7th defendant, forming the basis of title to the appellant, had been entered with the 7th defendant, who, even according to the appellant was not having the requisite title as on the date when the sale deed was alleged to have been entered. The appellate court further held that after filing E.A. No.107/2007, the sale deed had been entered into in the year 2011 and on the date when the petition was filed, viz., on 15.2.2007, the property not being in the name of the appellant, except for the unregistered agreement of the year 1994, the same would not grant any title to the appellant to claim the relief and, accordingly, dismissed the appeal against which the present second appeal has been filed.



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WEB COPY 13. The second appeal has been admitted in which two substantial questions of law were framed.

14. The first question of law relates to the dismissal of the petition filed under Order 21 Rule 58 CPC. Order 21 Rule 58 of CPC relates to attachment of any property, which is attached in execution of a decree on the ground that such property is not liable to such attachment, the manner in which the Court should proceed to adjudicate the claim is provided for therein. In the case on hand, though the appellant raises the applicability of Order 21 Rule 58 with regard to attachment to submit that when the attachment was ordered, the judgment debtor/7th respondent was not the owner of the property and that the Housing Board was the owner of the property and, therefore, the order passed is erroneous as the Housing has not been made a supporting party in the suit, however, the said question of law cannot survive for a simple reason that even according to the appellant, the judgment debtor/7th respondent was not the owner of the property on the crucial date, yet, the appellant claims that he had entered into a sale



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agreement with the said judgment debtor/7th respondent as early as in the year 1994. When according to the appellant, the judgment debtor/7th respondent had no title to the property even in the year 2005, the date on which the E.A. No.242/2005 has been filed, it defies logic as to how the appellant could enter into a sale agreement with a person, who had no title to the property on the crucial date and while claims that the attachment over the said property in the absence of any ownership being bad, yet wants this Court to accept that the sale agreement entered into with the judgment debtor/7th defendant is good and valid. The appellant cannot blow hot and cold over the same matter, as on the one hand, the appellant claims that the judgment debtor/7th defendant had no ownership over the said property, which has been attached, while on the other hand, the appellant claims that he had entered into the sale agreement with the judgment debtor/7th defendant. Rightly appreciating the above fallacy, the courts below have negated the claim of the appellant, which is based on proper application of law and reading of Order 21 Rule 58 CPC and necessarily the substantial question of law No.1 requires to be answered against the appellant and in favour of the respondents/defendants.



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15. Insofar as the second substantial question of law is concerned, the Courts below held that the appellant is a “Caveat Emptor” as on the date when the attachment was made, the claim of the appellant that the judgment debtor/7th defendant had no legal title over the property, cannot be accepted for the reason that the appellant claims his right to the property through the alleged sale agreement which is alleged to have been entered in the year 1993, though even on the said date, even according to the appellant the judgment debtor/7th defendant had no right and title over the property. Such being the case, the sale agreement, alleged to have been entered into with the appellant by a person who had no legal title on the said date, the courts below have rightly held that the appellant is a caveat emptor, as he will not have caveat to file any proceeding in the absence of any legal leg on which to stand. Once this Court has approved the said findings of the courts below on the first question of law, necessarily, the second question of law has also to be held against the appellant and the said question of law also deserves rejection.



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16. For all the above stated reasons, the present Civil Miscellaneous Second Appeal is dismissed and the Judgment and Decree Judgment and decree dated in AS.No.6 of 2015 on the file of the II Additional District Court, Erode dated 01.11.2014 is hereby confirmed. No costs.

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Index : Yes/No

Internet : Yes/No

Speaking /Non-Speaking Judgment

To

1. The II Additional District Court, Erode.
2. The I Additional Sub Court,, Erode.
3. The Sub court, Salem.
4. The Section Officer,
VR Section,
Madras High Court,
Chennai

M.DHANDAPANI, J.,

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