



C.M.S.A.No.41 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.S.A.No.41 of 2021

K.Lavanya

... Appellant

Vs.

1. Raja K.Sathyanarayana (Died)

[R4 brought on record as L.R's of the deceased
R1 vide Court order dated 27.04.2023 made in
C.M.P.No.6207 and 6211 of 2022 in
C.M.S.A.No.41 of 2021]

2. J.Kondasamy

3. Raja K.Dhandapani (Died)

[R6 to R9 are brought on record as L.R's of the deceased
R3 vide Court order dated 10.04.2023 made in
C.M.P.No.6214 of 2022 in C.M.S.A.No.41 of 2021]

4. Bala Kailka Rajalu

5. Vasantha (Died)

[R4 brought on record as L.R's of the deceased
R5 as per the memo dated 03.03.2023 and vide Court
order dated 10.04.2023 made in C.M.S.A.No.41 of 2021]



C.M.S.A.No.41 of 2021

6. D.Kokila
7. S.Kalpana
8. Sri Lakshmi
9. Ranjini Kanth

... Respondents

Civil Miscellaneous Second Appeal filed under Order 43 Rule 1 read with Section 100 of Civil Procedure Code to set aside the judgment and decree dated 19.06.2019 in C.M.A.No.9 of 2014 on the file of the III Additional District and Sessions Court, Coimbatore confirming the fair and decretal order dated 19.02.2014 in E.A.No.621 of 2010 in E.P.No.131 of 2008 in O.S.No.305 of 1994 on the file of the II Additional Subordinate Judge's Court, Coimbatore.

For Appellant : Mr.C.R.Prasanan

For Respondents : Mr.P.M.Duraiswamy
for R6 to R9
No appearance for R2
R1, R3 and R5 – Died
R4- Notice Refused
No

J U D G M E N T

Challenging the judgment dated 19.06.2019 made in C.M.A.No.9 of 2014 on the file of the III Additional District and Sessions Court, Coimbatore, confirming the order dated 19.02.2014 made in E.A.No.621 of 2010 in E.P.No.131 of 2008 in O.S.No.305 of 1994 on the



C.M.S.A.No.41 of 2021

file of the II Additional Subordinate Court, Coimbatore, the appellant being the third party has filed the present appeal.

2. Brief averments of the case are as follows :

The appellant herein is the daughter of the second respondent herein/judgment debtor in O.S.No.305 of 1994 on the file of the Subordinate Court, Coimbatore. The first respondent herein/decree holder filed the suit in O.S.No.305 of 1994 for recovery of money from the second respondent herein and obtained an *ex-parte* decree and filed Execution Petition in E.P.No.131 of 2008 for attachment and sale of the property. Prior to the filing of the Execution Petition, the father of the appellant/second respondent herein has settled the petition mentioned property in favour of the appellant, vide registered settlement deed dated 03.12.2004 and she took possession and was in enjoyment of the property as absolute owner. However, the decree holder, without even obtaining Encumbrance Certificate, brought the suit property for sale, though after proclamation, upset price was fixed on the petition mentioned property and without adopting the procedures, the decree holder himself set up his brother in the Court auction. Even without



C.M.S.A.No.41 of 2021

adhering to the procedure, the decree holder purchased the property through Court auction in the name of his brother/third respondent herein. Since on the date of attachment on 18.01.2006, the judgment debtor never had any right and title over the petition mentioned property, the appellant was put in possession and enjoyment of the said property. Therefore, the appellant filed an application in E.A.No.621 of 2010 in E.P.No.131 of 2008 before the learned II Additional Subordinate Judge, Coimbatore under Order XXI Rule 97 C.P.C to record the obstruction of the petitioner/appellant for delivery of possession of the petition mentioned property to the third respondent herein. However, the Execution Court failed to consider the factual aspects and dismissed the application. Challenging the same, the appellant herein filed C.M.A.No.9 of 2014, which came to be dismissed on 19.06.2019. Aggrieved by the said judgment, the appellant has come forward with the present appeal.

3. The learned counsel for the appellant has submitted that the first respondent/decreed holder suppressed the material facts and wrongly filed execution petition to attach the property of the appellant, even without



C.M.S.A.No.41 of 2021

adhering the execution proceedings and brought the property on sale and the third respondent herein took the property in Court auction on 10.08.2009.

However, prior to the attachment, the appellant has got right and title over the petition mentioned property, and therefore, the order passed by the Execution Court in E.P.No.131 of 2008 either for attachment or sale, is not valid and the same would not bind the appellant.

4. When the matter came up for hearing on 09.08.2023, this Court advised both the counsel that since the father of the appellant, who is the judgment debtor obtained loan from the first respondent, he did not contest the suit and *ex-parte* decree was passed, however, the appellant has benefited the property of his father. By applying principles of equity, since the appellant is enjoying the property of the judgment debtor by way of settlement, morally, she is responsible to clear the debts owned by her father.

5. The learned counsel for the appellant fairly conceded the same and also ready to pay the auction purchase amount along with interest at the rate of 15% from the date of decree till 30.08.2023, which comes to



C.M.S.A.No.41 of 2021

Rs.3,39,540/- to the respondents. The learned counsel for the appellant filed an affidavit of undertaking dated 15.08.2023 along with memo of calculation dated 15.08.2023 to that effect. The learned counsel appearing for the respondents 6 to 9 accepted the same.

6. Considering the facts and circumstances and the submissions made by the learned counsel on either side and also considering the affidavit of undertaking dated 15.08.2023 and memo of calculation dated 15.08.2023 filed by the appellant, this Court directs the appellant to deposit the entire amount of Rs,3,39,540/- to the credit of O.S.No.305 of 1994 on the file of the Principal Subordinate Court, Coimbatore, on or before 30.08.2023 and on such deposit, the respondents 6 to 9 are permitted to withdraw the deposited amount and the trial Court shall permit them to withdraw the said amount without filing any formal application. Failure to deposit the said amount, this appeal shall stand dismissed automatically, without further reference to this Court.

7. The impugned order passed in E.A.No.621 of 2010 in E.P.No.131 of 2008 is set aside and the appellant is entitled to retain the



C.M.S.A.No.41 of 2021

possession of the suit property.

WEB COPY

8. Since the matter has been compromised between the parties, this Court not dealing with the Substantial Questions of Law.

9. With the above direction and observations, this Civil Miscellaneous Second Appeal is partly allowed. There shall be no order as to costs.

17.08.2023

Note : Issue Order Copy on 18.08.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ms



WEB COPY



C.M.S.A.No.41 of 2021

To

1. The III Additional District and Sessions Judge,
Coimbatore.
- 2.The II Additional Subordinate Judge,
Coimbatore.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



C.M.S.A.No.41 of 2021

P.VELMURUGAN, J.

ms

C.M.S.A.No.41 of 2021

17.08.2023