



C.M.A.(MD).954 of 2012

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.07.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A.(MD).954 of 2012 and
M.P.(MD)No.1 of 2012

Gunaseelan

... Appellant

Vs.

1.Stephen Munindran
2.Thangapandian

3.The Branch Manager,
Indian Overseas Bank,
Chekkarakudi,
Thoothukudi District.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 104 read with Order XLIII R(1) of Civil Procedure Code against the fair and decreetal order, dated 20.06.2012, made in E.A.No.17 of 2011 in E.P.No133 of 2010 in O.S.No.33 of 2008 on the file of 1st Additional District Court Thoothukudi.

For Appellant	: Mr.B.Rajesh Saravanan
For R1 and R2	: No Appearance
For R3	: Mr.M.Senthil Kumar

JUDGMENT

The present Civil Miscellaneous Appeal is filed against the fair and decreetal order, dated 20.06.2012, made in E.A.No.17 of 2011 in E.P.No133 of



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2010 in O.S.No.33 of 2008 on the file of 1st Additional District Court
Thoothukudi.

2. The Learned Counsel appearing for the 2nd respondent has filed a memo stating no instructions and the said memo is recorded.

3. The brief facts of the case are that on 14.09.1994, the owner of the property Thangapandian had entered into a sale agreement with the present appellant Gunaseelan for Rs.9,42,600/- and had received Rs.50,000/- as advance. On 15.09.1994 and the said Thangapandian has executed a registered mortgage deed for the said amount of Rs.50,000/-. The owner has also disclosed in the sale agreement in the said mortgage. It has also been disclosed that the owner Thangapandian had mortgaged the property to Indian Overseas Bank, Chakarakudi Branch, Thoothukudi District. This was reflected in the sale agreement and it was agreed to settle the bank liability and sell the property to the present appellant Gunaseelan. Since Thangapandian had failed to execute a contract, Gunaseelan has filed O.S.No.64 of 2008 which was renumbered as O.S.No.178 of 2010 for a suit for specific performance and another suit in O.S.No.84 of 2009 was filed against the contract of mortgage. Both the suits were



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allowed in favour of the Gunaseelan. Aggrieved over the same, the owner Thangapandian preferred an appeal in A.S.No.17 of 2014 and the same was dismissed by the II Additional District Court, Thoothukudi. Aggrieved over the same, a second appeal in S.A.(MD)No.110 of 2015 was filed and the same was dismissed by this Court. Aggrieved over the same SLP(C)No.027233 of 2023 was filed and the same was dismissed on 25.12.2023.

4. Pending litigation, the owner Thangapandian executed a sale agreement to the 1st respondent herein namely Stephan Munindran wherein an interim order of attachment before the judgment was granted by the Trial Court. Subsequently, the said suit was allowed in favour of Stephan Munindran. Thereafter the said Stephan Munindran had preferred an execution petition in E.P.No.133 of 2010 and the present appellant Gunaseelan preferred E.A.No.17 of 2011 in the execution proceedings. The appellant Gunaseelan had contested the execution proceedings stating already he has a decree in his favour, therefore the said property cannot be sold to the said Stephan Munindran.

5. The Learned Trial Court had considered the plea and has dismissed the same wherein the reason cited is that the appellant herein has not marked the



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document of mortgage executed on 15.09.1994. However, on perusal of the order, it is seen that Exhibit A2 is the mortgage deed executed on 15.09.1994. Therefore, this Court is of the considered opinion that the Trial Court has terribly erred in not considering and appreciating Exhibit A2. Hence, the order passed by the Trial Court is liable to be set aside.

6. The second reason cited by the Trial Court is that the said Gunaseelan has only executed a sale agreement which has not been culminated into a sale deed, therefore, the sale cannot be relied on. But the Trial Court failed to consider the fact that the sale agreement of the appellant herein is prior to the sale agreement executed in favour of Stephan Munindran. The sale agreement executed in favour of the appellant herein is dated 14.09.1994, whereas the sale agreement executed in favour of the Stephan Munindran is dated 04.01.2008. As on the date of attachment before judgment, dated 20.04.2009, already a suit was pending in O.S.No.64 of 2008.

7. The Trial Court ought to have taken all these facts / entries into consideration, while passing order. Since the Trial Court failed to take into consideration, this Court is inclined to set aside the impugned order. Accordingly,



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the impugned order is set aside.

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8. The appellant submitted that he had filed an execution petition and the same is pending. The appellant shall implead appropriate and necessary parties including the respondents herein and contest the execution petition.

9. The appellant herein submitted that he is ready and willing to settle the dues to the bank. The bank has circulated a calculation sheet calculating from 19.12.1999 to 29.04.2024 along with interest payable and the same is quantified to the extent of Rs.9,71,237.50/-. The Trial Court shall consider the prayer of the appellant and consider the same as per law.

10. With the above said observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

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1.1st Additional District Court,
Thoothukodi.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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