



C.M.S.A.(MD).No.25 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.04.2024

DELIVERED ON: 23.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.M.S.A.(MD).No.25 of 2020
and
CMP(MD).Nos.6868 of 2020
and CMP(MD).Nos. 17644 & 17645 of 2023**

Ramesh

...Appellant

Vs

1.Santha Devi

2.Palanichamy

...Respondents

PRAYER: The Civil Miscellaneous Second Appeal has been filed under Order 21 Rule 58 (4) r/w 100 C.P.C, to set aside the fair and decreetal order dated 22.04.2019 passed in C.M.A.No.4 of 2018 on the file of the Additional District (Fast Track) Court, Theni confirming the order in E.A.No.168 of 2016 in E.P.No.91 of 2008 dated 29.08.2017 on the file of the Subordinate Court, Uthamapalayam, Theni District in O.S.No.487 of 2003 on the file of the Subordinate Court, Periyakulam, Theni District by allowing this civil miscellaneous second appeal.



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For Appellant : Mr.R.Aravindan

For Respondents : No appearance

J U D G E M E N T

A third party to O.S.No.487 of 2003 on the file of the Subordinate Court, Periyakulam at Theni District is the appellant herein.

(A)Facts leading to the filing of this appeal are as follows:

(2.).The first respondent in the appeal as plaintiff had filed O.S.No.487 of 2003 on the file of the Subordinate Court, Periyakulam for the relief of recovery of money based upon a mortgage. The said suit was decreed on 09.11.2005. Based upon the said decree, the decree holder had filed E.P.No.91 of 2008 to bring the property for Court auction and to recover the money. The Court auction sale was conducted.

(3)The Judgment Debtor had filed E.A.No.191 of 2009 under Order 21 Rule 90 of C.P.C. alleging that there are irregularities in the conduct of sale and the said application was dismissed on 06.10.2012 and the sale was confirmed on the same day. The Judgment Debtor has not chosen to challenge the said order.



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(4).The Judgment Debtor's son had filed E.A.No.66 of 2013 (renumbered as E.A.No.168 of 2016) under Order 21 Rule 97 of C.P.C., claiming title over the property. In the said application, the claim petitioner had contended that even before filing of the suit ie. on 19.06.2001, a family arrangement was entered into, in which the subject matter of the disputed property was allotted in favour of the claim petitioner while he was a minor. Even though the Judgment Debtor was aware of the fact that the property belongs to his son, he has not disclosed the same before the Court. The claimant came to know about the Court auction proceedings only, when the ameen visited the property on 11.07.2013. Since the property in dispute was not owned by the Judgment Debtor, the Court auction sale is not valid in the eye of law and he prayed for declaration of his title over the said property.

(5.)The Executing Court after considering the submissions made on either side had arrived at a finding that the family arrangement dated 19.06.2001 relied upon by the claim petitioner is not a registered document and the same was not disclosed by the Judgment Debtor during the execution proceedings. The said document has been created for the purpose of stalling the execution proceedings. Based upon the said



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observations, the Executing Court had dismissed the said application. Challenging the same, the claim petitioner had filed CMA.No.4 of 2018 before the Additional District (Fast Track) Court, Theni.

(6.)The First Appellate Court after independently analysing the submissions made on either side, had concurred with the findings of the Executing Court and further observed that the claim petitioner has not filed the original of the family arrangement and proceeded to dismiss the appeal. Challenging the same, the present appeal has been filed.

(B).Contentions of the learned counsel appearing for the appellant are as follows:

(7) The learned counsel for the appellant had contended that several illegalities have taken place in the auction conducted by the Court. He had further contended that in view of the family arrangement entered into in the year 2001, the schedule mentioned in the execution petition are the absolute properties of the claim petitioner. A family arrangement cannot be construed to be a transfer in terms of the Transfer of Property Act and therefore, it does not require any registration. The Executing Court as well as the Appellate Court have erred in holding that being an unregistered document, it cannot be relied upon.



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(8)He had further contended that there is no transfer *in-present* in the said family arrangement. On the other hand, partition that has already taken place and the same has been recorded and therefore, it does not require any registration. The auction purchaser, decree holder and the judgment debtor have colluded together and to restore the property of the claim petitioner, the Court ought to have entertained the claim petition and declared the title of the appellant.

(9)The learned counsel for the appellant had relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal No.7764 of 2014 (Ravinder Kaur Grewal & others Vs. Manjit Kaur & others) dated 31.07.2020 to contend that a mere memorandum prepared after a family arrangement has already been made, does not require any registration.

(10)Pending appeal, the appellant had filed CMP(MD).No. 17644 of 2023 seeking permission of the Court to receive the original of the family arrangement dated 19.06.2001 and CMP(MD).No.17645 of 2023 to raise additional grounds in the second appeal. A perusal of the appeal grounds indicate that the claim petitioner had challenged the validity of the decree. The learned counsel for the appellant had prayed that the application for additional evidence may be allowed and he may be



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permitted to raise additional grounds.

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11. Even though the respondents have been served, there is no appearance either in person or through their counsel.

12. I have considered the submissions made on either side and perused the material records.

(C) Discussion:

13. The primary contention of the learned counsel for the appellant is that the execution petition mentioned properties were allotted to the share of the claim petitioner by way of a family arrangement dated 19.06.2001 executed by his father who the Judgment Debtor in the present suit. Only a xerox copy of the said family arrangement was filed before the Executing Court. Now the original has been presented before this Court by way of application in CMP(MD).No.17644 of 2023. A perusal of the said original document reveals that the document runs upto four pages. The document numbers are 6101, 6102, 6095 and 6098. Therefore, it is clear that all the stamp papers have not been purchased on the same date namely on 19.06.2001. Therefore, this creates suspicion in the minds of the Court whether at all any such document was executed on 19.06.2001.



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14.A perusal of the family arrangement further reveals that the father of the claim petitioner namely Palanichamy has executed the said document in favour of his minor son who is the claimant herein. It discloses that the properties are allotted only under the document and it is not a record of the partition or family arrangement that has already taken place. Therefore, there cannot be any doubt that the document requires registration. The claimant in a claim petition under Order 21 Rule 97 of C.P.C has to establish his independent title and right over the property in dispute. Hence, on the basis of an unregistered document, the claim petitioner cannot make a claim over the property. All the judgements relied upon by the learned counsel appearing for the appellant lay down the proposition of law that when a family arrangement is made recording the allotment that have already taken place, it does not require registration. Therefore, those judgements are not applicable to the facts of the present case.

15.During the submissions, the learned counsel for the appellant had also raised various grounds attacking the validity of the decree and the manner in which the Court auction sale has been conducted. A perusal of the records indicate, alleging irregularities in the Court auction sale, the



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judgment debtor himself has filed E.A.No.191 of 2009 under Order 21 Rule 90 of C.P.C and the same was dismissed on 06.10.2012 and he had not chosen to challenge the same. Therefore, the submissions on the side of the claim petitioner in relation to the alleged irregularities in the conduct of sale cannot be re-agitated in the present claim petition.

16.The learned counsel for the appellant had further raised various grounds challenging the validity of the decree. The scope of Order 21 Rule 97 is that the claim petitioner has to prove his independent title, right and possession over the suit schedule property. The claim petitioner's title is not dependant upon the validity or otherwise of the decree. Therefore, any attack made upon the decree has no relevance whatsoever to the scope of the enquiry under Order 21 Rule 97 of C.P.C.

17.Our High Court in a judgement reported in **2011-1-LW.647 (Munusamy & 4 others Vs. Vengadachalam & 10 others)** in Paragraph No.17 has held as follows:

“17.Therefore, it has been made clear by the Hon'ble Supreme Court that in an enquiry under Order XXI Rule 97, when an obstructor objects to the delivery of possession by the decree holder, claiming independent right, the Court has to find out whether the obstructor has got any legal right to be in



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possession of the property and if the Court comes to the conclusion that he has got every right to be in possession of the property, the Court can pass orders to that effect and dismiss the application filed by the decree holder and in that proceedings, the Court cannot go into the legality of the decree passed in favour of the decree holder at the instance of the obstructor.....”

18.A careful perusal of the above said judgment would clearly indicate that in the proceedings under Order 21 Rule 97 of C.P.C, the Court cannot go into the legality of the decree passed in favour of the decree holder at his instance of the obstructor. In other words, the obstructor being a third party to the suit is not bound by the decree. Therefore, at his instance, this Court is not expected to adjudicate upon the validity of the decree. The claim petitioner is expected to establish his title independently vis-a-vis the decree holder without relying upon any weakness or defect in the said decree. In the present case, the judgment debtor has not chosen to challenge the validity of the decree and he was unsuccessful in challenging the Court auction sale.

19.In view of the above said deliberations, this Court is of the considered opinion that the grounds raised by the claim petitioner relating



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to the validity of the decree are not legally sustainable. There is no question of law much less a substantial question of law, to interfere in the order of the Appellate Court. There are no merits in the second appeal and this Civil Miscellaneous Second Appeal stands dismissed. Consequently, connected Civil Miscellaneous Petitions stand rejected. No costs.

23.04.2024

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

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To

1. The Subordinate Judge, Uthamapalayam,
Theni District
2. The Subordinate Judge, Periyakulam
Theni District
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in

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