



C.M.S.A.(MD)No.45 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.M.S.A.(MD)No.45 of 2016

and

C.M..P.(MD).No.10308 of 2016

Rajalingam

... Appellant / Appellant / 1st Respondent / Petitioner /
Plaintiff

Vs.

1.Chellammal

... 1st Respondent / 1st Respondent / Petitioner /
Third Party / Third Party

2.Pushpakani

3.Sasireka

... Respondents 2, 3 / Respondents 2, 3 / Respondents
2,3 / Respondents 1, 2 / Defendants 1,2

PRAYER: Civil Miscellaneous Second Appeal filed under u/o 43 (1) r/w under Section 100 of CPC to set aside the Fair and Decretal Order dated 19.01.2016 passed in C.M.A.No.28 of 2015 on the file of III Additional District Judge, Tirunelveli, confirming the Fair and Decretal Order dated 12.08.2015 passed in E.A.No.744 of 2014 in E.P.No.73 of 2013 in O.S.No.8 of 2011 on the file of Principal District Munsif Court, Tenkasi.



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For Appellant : Mr.S.S.Thesigan

For Respondents : No appearance

JUDGMENT

The present Civil Miscellaneous Second Appeal has been preferred by the plaintiff in this suit. The suit is preferred for recovery of money to the tune of Rs.2,17,600/- (Rupees Two Lakhs Seventeen Thousand and Six Hundred only).

2. The suit was filed on 10.01.2011 and the notice in the interim injunction order was issued on 10.01.2011 directing the defendant thereunder to pay half of the suit amount. On 24.01.2011, the defendant had received the said notice. For which, the plaintiff is relying on the suit summons on the receipt of the same before this Court as additional deficit. After receipt of the said notice, the defendant in the suit had executed a settlement deed in the name of his mother on 04.02.2011. The Court had attached the property on 07.02.2011 and had made the attachment absolute on 06.06.2011. Finally, the suit was decreed on 22.02.2013. Based on the decree, the plaintiff had preferred E.P. Petition on 09.04.2013 in E.P.No.73 of 2013. The mother of the defendant had preferred E.A.No.744 of 2014 claiming right over the property through the settlement dated 04.02.2011. Both the Courts have held since the attachment is after the



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settlement, the claim of the plaintiff cannot be entertained. But the contention of the plaintiff is that eventhough the attachment is on 07.02.2011, the defendant has received the attachment notice on 24.01.2011. After receipt of the said notice, the defendant had executed a settlement in his mother's name on 04.02.2011.

3. From this, it is evident, the defendant with malafide intention and without good faith had executed the settlement deed thereby attracting the principles of fraudulent transfer under Section 53 of Transfer of Property Act. For better appreciation Under Section 53 of Transfer of Property Act is extracted as follows:

“53.Fraudulent Transfer.- (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term include a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to



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defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

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(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.”

4. When the Section clearly states that there is no good faith or the transaction has not proper consideration when it come under fraudulent transfer. In the present case, since it is settlement consideration, it would not arise. However, the ingredients of the Section 53 is applicable under good faith. The defendant in order to avoid the decree passed in favour of the plaintiff had made the settlement in his mother's favour. Eventhough the attachment is subsequent the lower Courts ought to have taken the date of notice dated 24.01.2011 as the date for determining the issue among the parties since any attachment would be dated back to the date of notice. Therefore, this Court is inclined to allow this Civil Miscellaneous Second Appeal by setting aside the decree passed by both the Courts.



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5. Accordingly, this Civil Miscellaneous Second Appeal is allowed. There shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

20.06.2024

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

To

- 1.The III Additional District Judge,
Tirunelveli.
- 2.The Principal District Munsif Court,
Tenkasi.

Copy to

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



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S.SRIMATHY, J.

Sml

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