



C.M.S.A.(MD) No.37 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.S.A.(MD) No.37 of 2017

and

C.M.P.(MD) No.11433 of 2017

Pandian
S/o.Kaliyaperumal

... Appellant

Vs.

Anandan
S/o.Chellaiyan

... Respondent

Prayer:- Civil Miscellaneous Second Appeal filed under Section 108 read with Order XLII of CPC, to set aside the Judgment and Decree dated 03.08.2017 made in C.M.A.No.3 of 2015 on the file of the Additional District Court (Fast Track Court), Kumbakonam confirming the order dated 18.08.2014 made in E.A.No.122 of 2010 in E.P.No.83 of 2009 in O.S.No.262 of 2003 on the file of the Principal Sub Court, Kumbakonam.

For Appellant : Mr.R.Rajaraman

For Respondent : Mr.H.Lakshmi Shankar



C.M.S.A.(MD) No.37 of 2017

J U D G M E N T

WEB COPY Aggrieved by the concurrent findings of the Execution Court and the Lower Appellate Court, the Judgment Debtor has preferred the instant Appeal.

2. The appellant had suffered a decree in money suit in O.S.No.262 of 2003. He had remained *exparte* before the Trial Court. There is no challenge to the said decree. The respondent herein had filed E.P.No.83 of 2009. The appellant had filed counter affidavit and also filed E.A.No. 122 of 2010 stating that the property that was attached during the pendency of the suit belonged to his father and therefore ought not to have been attached and also prayed that the E.P. is liable to be dismissed. The Execution Court, after considering the rival submissions of the respondent and the appellant, held that the property which was earlier attached belonged to the appellant's father who died intestate in the year 2005 and also the appellant is entitled to 1/6th share in the said property and therefore held that to that extent, the Execution Petition can be allowed.

3. Challenging the said order, the appellant preferred C.M.A.No.3 of 2015 before the learned Additional District Judge (Fast Track Court),



C.M.S.A.(MD) No.37 of 2017

Kumbakonam. The learned Additional District Judge after considering the rival submissions confirmed the order of the Execution Court.

4. This Court had admitted this civil miscellaneous second appeal on the following substantial questions of law:-

- i. Whether the Judgments and decree of the courts below are right in holding that the execution petition in E.P.No. 83 of 2009 for brings the immovable property for sale, only on the basis of invalid order of attachment before Judgment?
- ii. Whether the Judgments and decree of the courts below are right in holding that the petitioner is the absolute owner for the entire property before the date of succession open, eventhough the Petitioner born along with brothers and sisters?
- iii. Whether the Judgments and decree of the courts below are rights in holding that the petitioner is the owner for the entire property, even though on the day of attachment his father is the absolute owner for the property, after the demise of his father, on the day of succession open the petitioner entitled 1/6 share from the father self acquire property along with the other five legal heirs?



C.M.S.A.(MD) No.37 of 2017

5. The learned counsel for the appellant submitted that the above orders of the Execution Court and the Lower Appellate Court are liable to be set aside on the sole ground that during the pendency of the suit, the decree holder had made a false statement that the property belongs to the appellant and obtained the order of attachment and therefore prayed for setting aside the above orders.

6. The learned counsel for the respondent, per contra, submitted that pursuant to the death of the appellant's father, the Execution Court and the Lower Appellate Court found that the appellant inherited 1/6th share in the property and therefore, the order passed by the courts below are in accordance with law and need not to be interfered with.

7. This Court had perused the orders of the courts below ie., the trial court and the lower appellate court and considered the submissions on either sides. It is case of the appellant that the property was not a self-acquired property of the appellant and therefore, the initial order passed attaching the entire property pending suit is *null and void* and thus, the orders passed by the Execution Court cannot be sustained.



C.M.S.A.(MD) No.37 of 2017

8. Even assuming that the court ought not to have attached the property pending suit, this Court is of the view that it would not make the order passed by the Execution Court bad in law. It is not in dispute that the appellant inherited 1/6th share in the property which belongs to his father. Taking into consideration of the said fact, the courts below had passed order in the Execution Petition only in respect of 1/6th undivided share held by the appellant and not the entire property. The order of attachment passed pending suit had not been challenged by the appellant. Therefore, merely because there is invalid order of attachment pending suit, the subsequent order passed in the Execution Petition which is accordance with law cannot be set aside. Therefore, the substantial questions of law are answered against the appellant.

9. There is no reason to interfere with the order. Therefore, the Judgment and Decree dated 03.08.2017 made in C.M.A.No.3 of 2015 on the file of the Additional District Court (Fast Track Court), Kumbakonam confirming the order dated 18.08.2014 made in E.A.No.122 of 2010 in E.P.No.83 of 2009 in O.S.No.262 of 2003 on the file of the Principal Sub Court, Kumbakonam is confirmed.



C.M.S.A.(MD) No.37 of 2017

10. In the result, this Civil Miscellaneous Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.08.2024

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

JEN

Copy To:

- 1.The Additional District Judge,
(Fast Track Court),
Kumbakonam.
- 2.The Principal Sub Judge,
Kumbakonam.



WEB COPY



C.M.S.A.(MD) No.37 of 2017

SUNDER MOHAN, J.

JEN

C.M.S.A.(MD) No.37 of 2017
and
C.M.P.(MD) No.11433 of 2017

07.08.2024