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S.A.No.253/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-01-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

S.A.No.253 of 2011

Chinnaraj (died)

1. Chennammal,

2.Vijaya

3.Latha

4.Krishnaraji

5.Ashok

6.Sudha

all residing at

Vadugapalayam Village,

Ulundurpet Tk,

Villupuram Dt.

...

Appellants

Vs.

1.Vembu

2.Mahalakshmi

3.Kasikannu Ammal

...

Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgement and decree dated 24.03.2010 passed by the First Additional Sub Judge, Villupuram in A.S.No.211/2003 reversing the judgement and decree dated 28.06.2002 passed by the First Additional District Munsif cum



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Judicial Magistrate No.1, Ulundurpet in OS.No.17/1998.

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For Appellants : Mr.P.Mohanraj

For Respondents : Mr.K.Venkatasubban for
M/s.Sarvabhauman Associates for R1

: R2- No appearance

: R3- No appearance

JUDGEMENT

The defendants 2 to 5 are the appellants. The plaintiff has filed the suit for declaration and recovery of possession. The suit was dismissed by the trial Court. The second plaintiff has filed the first appeal and the first appeal was allowed by reversing the judgment of the trial Court. Aggrieved over the same, the defendants 2 to 5 have preferred this second appeal.

2.The short facts pleaded in the plaint by the plaintiff are as follows:

The suit property originally belonged to the plaintiff's father Perumal Gounder. The plaintiff's father Perumal Gounder, along with the plaintiff's



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mother as guardian of the plaintiff have executed a settlement deed dated 13.02.1981, in favour of the plaintiffs. The plaintiff's mother in her capacity as guardian for the plaintiffs, have accepted the settlement and had taken possession of the suit property. One Chellammal had brought the suit property for sale in order to recover the decree she had obtained in O.S.No.551 of 1981 filed against the plaintiff's father on a suit promissory note. The defendants declared that they have taken the suit property in a Court auction purchase on 23.04.1997 and attempted to enter into the suit property on 10.01.1998. Subsequent to the settlement deed dated 13.02.1981 the plaintiff's father did not have any title over the suit property and hence the Court auction in favour of the defendant will not bind the interest of the plaintiffs. The plaintiffs continued to be in enjoyment of the suit property with the knowledge of the defendant for more than 12 years and by virtue of the continuous possession also they have prescribed title over the suit property. As the defendants set up the title over the suit property, the plaintiffs have filed the suit for declaration along with the relief of recovery of possession in the event the defendant dispossesses the



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plaintiff's possession over the suit property.

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3. The averments made in the written statement filed by the first defendant are as follows:

The suit property was originally owned by Perumal Gounder. The settlement deed dated 13.02.1981 is not valid and enforceable and it was not acted upon. The plaintiff's father Perumal Gounder had obtained loan from one Chellammal and had executed a promissory note. As he had defaulted to repay the loan, Chellammal filed a suit before the Thirukoilur Munsif Court in O.S.No.551 of 1981 and got a decree on 16.10.1982. Subsequently she had brought the property for Court auction and the first defendant had taken the suit property in Court auction on 19.10.1992 and the same was confirmed on 29.11.1996. Subsequently the 1st defendant filed a delivery petition in E.A.No.149 of 1997 and he had also obtained delivery through Court on 23.04.1997. The suit property is in enjoyment of the first defendant and patta has also been transferred in his name. Subsequent to the confirmation of the Court auction purchase, Perumal



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Gounder has filed a suit in O.S.No.551 of 1981 to cancel the auction and the same was dismissed and Perumal Gounder has not taken any further action after the said petition was dismissed. Hence, the suit filed by the plaintiff is not maintainable and Perumal Gounder had created the settlement deed in collusion with his family members just to defraud the loans he obtained from third parties.

4. The second and third defendants have also filed written statement in the same line in which the first defendant had filed the written statement. The first plaintiff has also filed a claim petition on the basis of the settlement deed in his favour before the Executing Court and requested to raise the attachment. The said petition was also dismissed on 07.10.1993 and the Civil Miscellaneous Appeal filed by the first plaintiff in C.M.A.No.51/1993 has also been dismissed. Hence the plaintiff's suit itself is not maintainable.

5. During the course of the trial, on the side of the plaintiff four



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witnesses were examined as P.W.1 to P.W.4 and Exs.A1 to A14 were marked. On the side of the defendant two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 to B10 were marked.

6. At the conclusion of the trial and on considering the evidence available on record, the trial Court has dismissed the suit and on the first appeal filed by the plaintiffs, the lower appellate Court reversed the judgment of the trial Court by allowing the appeal. Now the defendants 2 to 5 have filed the Second Appeal.

7. The learned counsel for the appellants submitted that the first appellate Court, without considering the previous proceedings filed by the first plaintiff's father and first plaintiff, questioned the attachment of the suit property in the Court auction proceedings in pursuant to the execution proceedings initiated by the decree holder in O.S.No.551/1981 and the same have been dismissed by confirming the Court auction purchase in favour of the first defendant. The first plaintiff himself has filed a petition before the



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Executing Court to raise the attachment on the basis of the settlement deed in his favour, but the same was dismissed and the Civil Miscellaneous Appeal filed challenging the above order has also been dismissed. But the lower appellate Court has held that the Court auction proceedings are invalid and that will not bind the interest of the plaintiff's 1 and 2 as they were minors during the relevant point of time.

8. The learned counsel for the respondents submitted that the first appellate Court is right in its observation that the Court auction proceedings will not bind the interest of the plaintiffs as they were minors and their right over the suit property pursuant to the settlement deed executed in their favour is very much valid.

9. The argument of the both sides revolves around the Court auction proceedings in which the first defendant's Court auction purchase has been confirmed and the proceedings filed challenging the Court auction purchase has been dismissed and thereafter, the Civil Miscellaneous Appeal filed



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challenging the order refusing to raise the attachment over the suit property also got dismissed. Hence, in this Second Appeal, the following Substantial Question of Law alone arises for consideration:

“Whether in law the lower appellate Court is right in granting the relief to the plaintiffs on the basis of Ex.A1-settlement deed when the same was not accepted in the order passed in C.M.A.No.61/1993 before the Sub-Court, Villupuram.”

10.The learned counsel for the respondent submitted that the First Appellate Court has rightly observed that the suit property has not been attached before the execution proceedings and that the settlement deed executed by Perumal Goundar is not to defraud his creditors. As the First Appellate Court has rightly appreciated the merits of the matter, the appeal has to be dismissed.

DISCUSSION:



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11. The fact that the suit property originally belonged to one Perumal Goundar and that he executed a settlement deed in favour of the plaintiffs through a settlement deed dated 13.02.1989 is not denied. But the very same property had been attached in the subsequent execution proceedings initiated by a decree holder of a suit filed in OS.N0.551/1981 against the plaintiffs' father on a promissory note. In a Court auction the said property has been auctioned and the 1st defendant has been declared as the auction purchaser and the auction purchase in his favour has also been confirmed by the execution Court on 29.11.1996.

12. In fact, the Court auction purchaser had taken delivery of the property also by filing a delivery application in E.A.No.149/1997 and the mutation of revenue records have also been effected in favour of the 1st defendant by virtue of the sale certificate issued by the Court. The plaintiffs' father, Perumal Goundar, during his life time, has filed a suit in OS.No.551/1981 to cancel the Court auction purchase in respect of the suit property and the same was also dismissed. In fact the 1st plaintiff has filed a



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claim petition before the executing Court itself to raise the attachment by claiming that the suit property belonged to him. But the claim petition has been dismissed and the civil miscellaneous appeal filed by the 1st plaintiff challenging the claim petition has also been dismissed in CMA No.51/1993. However, the First Appellate Court had taken a different view by an observation that the suit property has not been attached in view of the decree passed in O.S.No.551/1981.

13. The first Appellate Court has further observed that Ex.A1 settlement deed has been executed in favour of the plaintiffs not to defeat the interest of the decree holder in OS.No.551/1981 and that the settlement deed has been executed only out of good intention as the settlor has been affected by repurchase. All these arguments are the subject matter of the claim petition filed by the 1st plaintiff before the execution Court and the executing Court had dismissed the claim petition by holding that the claim made by the 1st plaintiff is not acceptable. The Civil miscellaneous application filed challenging the orders passed in the claim petition has also



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been dismissed by confirming the order passed on the claim petition.

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Thereafter, the 1st plaintiff has not challenged the order passed in CMA No.61/1993 before the High Court. So the order passed in CMA.No.61/1993 by the Sub Court, Villupuram had attained finality so far as the claim of the 1st plaintiff in respect of the suit property. In view of the same the execution proceedings initiated by the decree holder to recover the decree amount from Perumal Gounder had also attained finality in view of the Court auction held in respect of the suit property. The sale in favour of the auction purchaser has also got confirmed and delivery has also been effected in his favour.

14. In such case, the First Appellate Court ought not to have dealt with the merits of the orders passed in the claim petition and the CMA No.61/93, if it had assumed appellate jurisdiction over those orders. Since the title in favour of the Court auction purchaser in respect of the suit property has already been confirmed and it has also been acted upon and delivery has also been effected, the first Appellate Court ought to have



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taken note of those facts and the earlier orders of this Court before allowing the appeal. Even though the trial Court has rightly appreciated the materials on record in the background of the earlier Court proceedings, especially the Court auction purchase and the orders passed in the claim petition and the CMA No.61/93, the First Appellate Court had overlooked those facts and had taken an improper view of the matter.

15. As the First Appellate Court has allowed the appeal, without giving a validity to the earlier orders passed in the claim petition filed by the 1st plaintiff and orders passed in CMA.No.61/93, the substantial question of law that has arisen for consideration in the second appeal is bound to be answered in favour of the appellant. Had the First Appellate Court rightly understood the validity of the earlier court orders and the fact that it attained finality, that would have changed the result of the first appeal. Since the judgement of the first Appellate Court is erroneous and lacks merits, it is liable to be set aside.



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16. In the result, the Second Appeal is **allowed**. The judgement and decree passed by the First Additional Sub Judge, Villupuram in A.S.No.211/2003 dated 24.03.2010 is set aside and the judgement and decree dated 28.06.2002 passed by the First Additional District Munsif cum Judicial Magistrate No.1, Ulundurpet, in OS.No.17/1998 is restored. No costs.

02.01.2025

jrs

Index: Yes/No

Speaking: Non-Speaking Order

Internet: Yes/No

Neutral: Yes/No

To

1.The First Additional District Munsif cum
Judicial Magistrate No.1, Ulundurpet.

2. The First Additional Sub Judge,
Villupuram.



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R.N.MANJULA, J

jrs

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