

C.M.S.A.(MD) No.29 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.S.A.(MD)No.29 of 2024

Kulandhaivel

... Appellant

vs.

Dhanam (died)

1. Krishnamoorthy

2. Kanagambujam

3. Balachandar

4. Mangaiyar Thilagam

...

Respondents

PRAYER: Civil Miscellaneous Second Appeal is filed under Order 21 Rule 58 (2) and r/w Section 100 of C.P.C, to set aside the order passed in C.M.A.No.13 of 2022 on the file of the Principal District and Sessions Court, Pudukottai.

For Appellant : Mr.M.Kumar

For Respondents : Mr.R.Lenin Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the petitioner in E.A.No.10 of 2022 in E.P.No.251 of 2022 in O.S.No.214 of 2009 dated



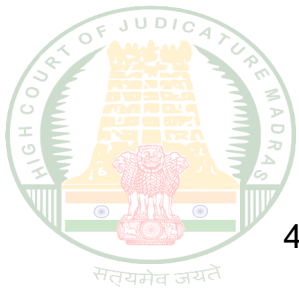
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26.08.2022 by the Subordinate Court, Keeranur.

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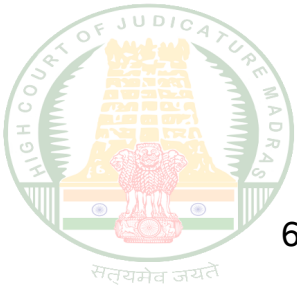
2. Case of the petitioner is that the suit property originally belongs to the petitioner's father Palaniyandi and a rice mill was constructed on the said property and he was in possession and enjoyment of the same. The 1st and 3rd respondents are the sisters of the claim petitioner's father Palaniyandi, the 2nd respondent is his brother. The claim petitioner was not residing in the native and as his father was ill, the respondents were managing the properties. His father died in the year 2000. Electricity connection for the suit property was changed in the name of the respondents and it was let out for rent.

3. His further case is that on 27.01.2020, when the Senior Bailiff came to the suit property, he came to know that the respondents no.1 to 3 have filed a suit in O.S.No.214 of 2009 as against one Balachandar and Mangayar Thilagam and an order of delivery was passed in E.P.No.44 of 2016. The respondents no.1 to 5 had created fake documents and changed the electricity connection in the name of the respondents no.1 to 3. The suit property was in the possession of the claim petitioner and patta also stands in his name. The claim petitioner prayed to declare him as the owner of the property and for consequential reliefs.



4. Per contra, the respondents no.1 and 2 would state that originally the suit property belonged to their father Govindhan. He purchased the suit property by way of registered sale deed dated 21.01.1963 and the said Govindhan was in possession and enjoyment of the suit property and in fact, he constructed the rice mill and obtained electricity connection. He had let out the property to the 4th and 5th respondents herein (Balachandar and Mangaiyar Thilagam). After the lifetime of Govindhan, the 4th and 5th respondents did not pay the rent and the respondents No.1 to 3 filed a suit in O.S.No.214 of 2009 and it was decreed in their favour by a judgment and decree dated 15.12.2014. Execution petitions were filed in E.P.Nos.44 of 2016 and 22 of 2018 by the respondents no.1 to 3 against the respondents no.4 and 5. The Executing Court in E.P.No.44 of 2016 ordered to hand over the vacant possession to the respondents no.1 to 3 on 11.12.2019 and the claim petitioner does not have any title over the suit property. Therefore, it was prayed to dismiss the claim petition.

5. On behalf of the respondents no.4 and 5, it was contended that it is incorrect to state that the father of respondents no.1 to 3 let out the suit property to the respondents no.4 and 5.



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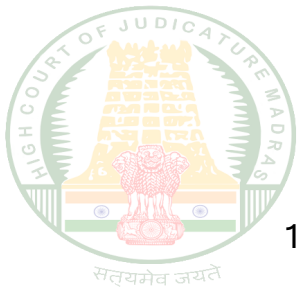
6. During the enquiry, on the claim petitioner side Ex.P1 to Ex.P9 were marked and on the respondents side, six documents were marked.

7. Upon consideration of the case records and arguments of both sides, the Executing Court dismissed the application. Against which, the claim petitioner filed a C.M.A.No.13 of 2022 before the Principal District Court, Pudukottai and it was also dismissed. Against the concurrent finding of order of dismissal, the claim petitioner has filed the present Civil Miscellaneous Second Appeal No.29 of 2024.

8. The substantial question of law arises for consideration is whether the above said Courts were correct in dismissing the claim of the appellant herein.

9. The claim petition was filed under Order 21 Rule 97 of C.P.C. In fact, the claim petitioner has claimed an independent title.

10. An obstruction under Order 21 Rule 97 of the code can be maintained by a person who is not bound by the decree or who claims an independent right over the property.

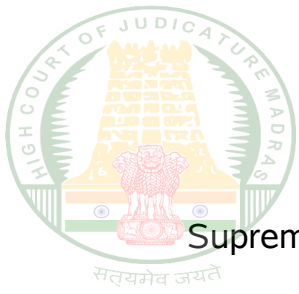


11. The suit was filed by the respondents no.1 to 3 against the respondents no.4 and 5 (tenants) for the relief of permanent injunction.

Whereas, under Order 21 Rule 97 of C.P.C., any person claiming right on the property as his own, his objections would be decided by the Executing Court. Therefore, the law is well settled that when a person claims an independent right dehors the rights of the owners, such a person may invoke Order 21 Rule 97 C.P.C.

12. Ex.P1 is the patta standing in the name of the claim petitioner dated 26.09.1998 and Ex.P2 is the patta transfer order dated 16.06.2021 in the name of claim petitioner / appellant herein. The suit property is claimed on the strength of unregistered documents obtained from the husband of the 1st respondent deceased Dhanam. It is so strange to note that patta was issued in the year 1998 itself. Whereas, patta transfer order was passed thereafter in the year 2021.

13. From a careful perusal of the records, it appears that the claim is so delusive and that the documents obtained from the Department of Revenue which are ex facie not legal. He has tried to dupe the legal rights of the plaintiffs herein. Unregistered sale deed does not give any legal rights who relies upon the same. I am reminded of the words of the Hon'ble



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Supreme Court in S.P **Chengalvaraya Naidu vs Jagannath** reported in

1994 (1) SCC 1 that:

“... the courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

14. As regards the claim petitioner, based on unregistered sale deed, he obtained patta by fraudulent means and he had filed claim petition before the Executing Court and protracted the execution proceedings. Not stopping with that he filed Civil Miscellaneous Appeal before the Principal District Court Pudukkottai and it was also dismissed. This Court finds no good reason to upset the findings of the Executing Court and the First Appellate Court.

15. Based on the aforestated discussions and observations, this Civil Miscellaneous Second Appeal has to be dismissed in limine and stands



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dismissed with costs throughout. Sequel to this, the Order passed by the
Executing Court in E.A.No.10 of 2022 in E.P.No.251 of 2022 in O.S.No.214
of 2019 dated 26.08.2022 stands confirmed.

31.01.2025

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

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To

1. The Principal District and Sessions Court, Pudukottai.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R.KALAIMATHI, J.

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