

In the Court of Subordinate Judge, Aruppukottai
Present : Thiru. A. Pasumpon Shunmugiah, B.A., B.L., LL.M.,
Subordinate Judge, Aruppukottai.

C.M.A. No.1 of 2019

Dated on Wednesday, the 10th Day of July 2019.

M/s. R & A Business Ventures Pvt Ltd,
through its Chief Executive Officer A. Amarnath Appeal Petitioner/Petitioner/Plaintiff

/ Vs/

Veerapandian ... Respondent/Respondent/Defendant

This Civil Miscellaneous Appeal came up from the Order and Decreetal Order of the
Learned District Munsif, Aruppukottai in I.A.No.21 of 2018 in O.S.No. 1 of 2018 dated
29.01.2019.

Aruppukottai District Munsif Court

I.A.No.21 of 2018

in

O.S. No.1 of 2018

M/s. R & A Business Ventures Pvt Ltd,
through their Chief Executive Officer A. Amarnath Petitioner/Plaintiff

/ Vs/

Veerapandian ... Respondent/Defendant

This Civil Miscellaneous Appeal came up for final hearing before me on 21.06.2019, in the presence of Thiru. B. Ganesan, Thiru. B. Senthilkumar, Thiru. N. Sangili Murugan, Advocates for the Appeal Petitioner/ Petitioner/ Plaintiff and Thiru. R. Mohan, Thiru. M. Mareeswaran, Advocate for the Respondent/ Respondent/ Defendant and upon hearing both side arguments and upon perusing the documents filed on both sides, having stood over till date for my considerations, this Court passed the following

ORDER

1. The Plaintiffs in O.S.1/18 on the file of Principal District Munsif, Aruppukottai are the Appeal Petitioners/Petitioners.

2. This CMA.1/19 is filed against I.A.No.21/18 in O.S.1/18 dated 29.01.2019.

3. The Plaintiffs filed suit for Bare Injunction restraining the Defendant from interfering his possession and properties, in which Order 39 Rule 1 CPC application was filed and the same was dismissed by the Trial Court on 29.01.2019 and against which this CMA is preferred by the Petitioner/Plaintiff.

4. Brief averments of the Petition as follows:-

The suit is filed for the relief of Permanent Injunction. The Petitioner/Plaintiff has purchased the Petition mentioned properties from one Kannappan by way of Registered Sale Deed, the said Kannappan purchased by way of sale deed dated 09.07.2007. Patta in the name of the Petitioner and property is in enjoyment of the Petitioner/Plaintiff. Hence this Petition is filed.

5. Brief averment of the Respondent:-

The Petition mentioned properties originally belonged to one Aaladiappan, who was the grandfather of the Defendant. Aaladiyan died intestate leaving behind Defendant's father Kandasamy, Kaliasammal and Ponnuthai. But Kandasamy executed Sale Deed in favour of Kannappan, but Kandasamy had only 1/5 share in the suit property. Hence O.S.No.106/16 filed by this Respondent/Defendant in Sub Court, Aruppukottai for partition and declaration of sale deed executed by Kandasamy to Kannappan dated 06.07.2007 as null and void. The said suit was decreed against the Petitioner/Plaintiff. The suit is bad for non-joinder of necessary parties. Hence the Petition is liable to be dismissed.

6. Before Trial Court, no oral evidence was adduced on both sides. Ex.P.1 to Ex.P.12 were marked on the side of the Petitioner and Ex.R.1 to Ex.R.7 were marked on the side of the Respondent.

7. After Enquiry, the Trial Court has dismissed the petition.

8. Against the Order of the Trial Court, the Petitioner/Plaintiff has preferred this Civil Miscellaneous Appeal.

9. Brief averments of Petition:-

The Trial Court has not properly considered that Kandasamy sold his suit properties for family expenses through document No.888/2007 dated 09.07.2007. The Lower Court has omitted to take into consideration of estoppel against the Respondent, he who is the attester of the document No.888/2007. The Trial Court has not properly considered about that Kannappan was enjoying the property by way of Patta No.419 from the date of Sale Deed execution on 09.07.2007 from Kandasamy. The Petitioner has purchased two properties only after careful consideration of revenue documents in the name of Kannappan. Hence Petitioner is a bonafide purchaser. After Sale Deed execution, the Petitioner has enjoyed these properties through Patta No.406.

Even after fully knowing the 09.07.2007 dated Sale Deed, the Respondent has filed a collusive suit against his father before Aruppukottai Sub Court for partition. In which, the Respondents were remained exparte. The suit was filed collusively by the Respondent along with his brothers. The Trial Court has omitted to consider that the Petitioner has filed the suit as Chief Executive Officer since the Petitioner's Company has purchased it. Hence this Civil Miscellaneous Appeal to be allowed and the Order and Decreetal Order passed by the Principal District Munsif Court, Aruppukottai in I.A.No.21/2018 in O.S.No.1/2018 to be set aside with cost.

10. Point for consideration:-

Whether this Civil Miscellaneous Appeal is to be allowed or not?

11. Both sides heard. Before the Trial Court Ex.P.1 to Ex.P.12 were marked in Petitioner/Appellant's side and Ex.R.1 to Ex.R.7 were marked in Respondent/Defendant's side.

12. On careful perusal and analysing both side arguments and documents, it is clear that Appeal Petitioner/Petitioner/Plaintiff claiming right through 06.07.2007 dated Registered Sale Deed which was executed by one Kandasamy in favour of Kannappan who is vendor of the Appeal Petitioner/Petitioner. The said Kannappan executed Registered Sale Deed dated 14.03.2014 in favour of Anjaiah who is the father of the Petitioner/Appellant Amarnath.

13. From the above version, it is clear that the whole claim of the Appeal Petitioner/Petitioner/Plaintiff is on the basis of document No.888/2007 which was executed by Kandasamy to Kannappan, in turn, Kannappan executed a sale deed in favour of the Petitioner's father Anjaiah. At the same time, as per Ex.R.2 which is 09.08.2017 dated decree in O.S.No.106/2016 on the file of Sub Court, Aruppukottai. By Ex.R.2 decree, Aruppukottai Sub Court has passed 1/4 share in Petition schedule property in favour of the Respondent/Defendant herein and also through that decree, Sub Court has declared that the so called Sale Deed in Document No.888/2007 dated 06.07.2007 as null and void.

14. On the other hand, the Appeal Petitioner/Petitioner/Plaintiff has stated that O.S.No.106/16 was a collusive one, in the instigation of Respondent/Respondent/Defendant against his father Kandasamy and Kannappan who is vendor of the Appeal Petitioner.

15. But this Court feels that as per Ex.R.1, Ex.R.2, there is a decree in O.S.No.106/16 in the file of Sub Court, Aruppukottai by which 1/4 share were allotted to the Respondent/Defendant, more particularly, the so called document No.888/2007, 06.07.2007 dated sale deed was declared as null and

void. From Ex.R.1 and Ex.R.2, it is clear that document No.888/2007 was declared as null and void by Sub Court, Aruppukottai which is a competent civil court. As far as the Appeal Petitioner/Petitioner/Plaintiff is concerned, it is a collusive decree effected by the Respondent/Respondent/Defendant against his father Kandasamy and Kannappan.

16. But this Court feels that the decree is a decree which may be a collusive or genuine one, but till date it is not challenged or modified by this Petitioner, hence the value of decree cannot be minimised. Hence this Court feels when Appeal Petitioner/Petitioner/Plaintiff pleads and seeks injunction on the basis of sale deed document No.888/2007, but it has been declared as null and void by competent civil court. At this juncture, that issue has to be settled down through proper forum. Hence this Court feels that it is not in a position to decide the validity of decree passed by the Sub Court, Aruppukottai in O.S.No.106/16 in this appeal, since this Court is having limited scope to decide whether order passed by the Trial Court in I.A.No.21/18 is valid or not. Further more, when there is a decree against title of Appeal Petitioner/Petitioner/Plaintiff by way of partition and declaration on sale deed, this Court feels that without settling down those issues, it is not fair on the part of the Court to give findings in favour of the Appeal Petitioner/Petitioner/Plaintiff without taking into consideration of above said decree and judgment in Ex.R.1 and Ex.R.2.

17. Further this Court feels that the Trial Court findings in para 12 of Order in I.A.No.21/18 dated 29.01.2019 that the Appeal Petitioner/Petitioner/Plaintiff's locostandi to file application as against the Respondent/Respondent/Defendant. This issue is also required to be decided by oral and documentary evidence after full trial. Hence the Appeal Petitioner/Petitioner/Plaintiff has to get clearance about the locostandi to file this suit as well as petition in oral and documentary evidence.

18. Hence from the above discussions, it is clear that the locostandi to file the Petition as well as decree and judgment in Ex.R.1 and Ex.R.2 issues have to be settled down before the Trial Court through oral and documentary evidence. Unless until, this issues are settled, this Court feels that an injunction cannot be granted in favour of the Appeal Petitioner/Petitioner/Plaintiff against the Respondent/Respondent/Defendant who got decree and judgment with regard to suit property through decree and judgment in Ex.R.1 and Ex.R.2.

19. In the result, this Civil Miscellaneous Appeal is dismissed and Order and Decretal Order of the Principal District Munsif Court, Aruppukottai in I.A.No.21/18 in O.S.1/18 dated 29.01.2019 is confirmed. No costs.

Dictated to the Stenographer and typed in the computer directly and after correction, this Order is pronounced in the Open Court.

This the 10th day of July, 2019.

**Subordinate Judge,
Aruppukottai.**

Copy to

The Principal District Munsif,
Aruppukottai.

Sub Court, Aruppukottai
CMA.No.1 of 2019
Fair/Draft Order
Dated: 10.07.2019