
(2014) 08 MAD CK 0013

In the Madras High Court

Case No : C.M.A. No. 6 of 2014 & M.P. No. 1 of 2014

Palaniappan

APPELLANT

Vs

Dharmalingam

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2014) 3 MadWN(Civil) 399

Hon'ble Judges : S. Subbiah, J.

Bench : Single Bench

Advocate : T. Dhanyakumar, Advocate, for the Appellant; P. Valliappan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

S. Subbiah, J.—This Appeal has been filed as against the Order passed by the learned Principal District Judge, Namakkal, dated 13.9.2013 in an Application in I.A. No.18 of 2013 in A.S. No.11 8 of 2011 filed under Order 39, Rule 2-A and Section 151, CPC.

2. The brief facts which are necessary to decide the Appeal are as follows:

The Respondent herein filed a Suit in O.S. No.69 of 1999 as against one Chinnappa Gounder and others for Specific Performance of an Agreement of Sale dated 25.11.1996. The Suit property is an Agricultural land. During the pendency of the said Suit., the Appellant Sixth Defendant has purchased the said property and attempted to convert, it into house sites and also tried to sell them to third parties. He appointed one R. Balasubramaniam, son of Rangasamy, residing at No.2/27, Sengappalli Village, Palapatty Post, Paramathi Velur Taluk, as his Power of Attorney under a registered document dated 27.7.2009. The said Suit was dismissed on 26.7.2011 by the learned Sub-Judge, Namakkal. Against the Order of dismissal, the Respondent herein filed an Appeal in A.S. No.118 of 2011 before the learned Principal District Judge, Namakkal. Pending Appeal the Respondent herein has also filed an Application in I.A. No.114 of 2013 for Temporary

Injunction, restraining the Appellant herein and his men from in any manner alienating the Suit property pending disposal of the Appeal. In the said Application, Ad-interim Injunction was granted by the learned Principal District Judge, Namakkal. Notice was also served on the Appellant herein and on receipt of the Notice, the Appellant herein has engaged a Counsel to appear on his behalf in the said Appeal. However, the Appellant has not filed any Counter in the said Application. Thereafter, on 14.3.2012, the learned Principal District Judge, Namakkal has extended the Order of Interim Injunction till the disposal of the said Appeal. While the Order of Interim Injunction is in force, the Power of Attorney of the Appellant herein entered into a registered Agreement of Sale with one P. Subramaniam, son of perumal Asari of Vettukkattupuckur, Paramathi Velur Taluk on 3.9.2012. Hence, the Respondent herein issued a Notice on 7.12.2012 to the Appellant herein as well as his Power of Attorney-R. Balasubramaniam and the said P. Subramaniam informing them about the Order of Interim Injunction passed by the learned Principal District Judge, Namakkal. The Appellant received the said Notice, but, his Power of Attorney refused to receive the Notice. When the Respondent came to know that the Appellant has sold several portions of the Suit property to various persons, he filed an Application in I.A. No.18 of 2013 under Order 39, Rule 2-A and Section 151, CPC to punish the Appellant herein for the wilful and deliberate disobedience of the Order of Interim Injunction. In the said Application, the Appellant herein has not filed Counter. On 10.7.2013, the Appellant herein was called absent and set ex parte. Thereafter, the learned Principal District Judge, Namakkal, on perusal of the materials available on record, passed an Order holding that the Appellant herein has deliberately and wilfully disobeyed the Order with full knowledge of the consequences and ordered to detain the Appellant herein in the Civil Prison for a term of one month and also ordered for Attachment of the property. Now, aggrieved over the said Order, the present Appeal has been filed by the Appellant.

3. Learned Counsel appearing for the Appellant has submitted that the Suit filed by the Respondent herein for Specific Performance of the Agreement of Sale was dismissed. As against the same, the Respondent herein has filed an Appeal in A.S. No.118 of 2011. The Suit property was sold by the Power of Attorney, who was not aware of the Order of Interim Injunction and therefore, absolutely, there is no wilful disobedience of the Order of Interim Injunction. Further, the learned Counsel appearing for the Appellant submitted that since the Lower Appellate Court has already ordered for Attachment of the property subjected to the Sale Agreement, the Lower Appellate Court ought not to have ordered for detention of the Appellant in Civil Prison, since the Order of Attachment itself is sufficient to safeguard the interest of the Respondent.

4. Per contra, learned Counsel appearing for the Respondent by relying upon the judgment of the Hon'ble Supreme Court in the case of Samee Khan v. Bindu Khan, 1999 (1) CTC 295 (SC) : AIR 1998 SC 2765, submitted that if the Court deems it fit, it can order for Civil Prison to detain a person for violating the order of the Court apart from ordering Attachment of the property.

5. Keeping the submission made on either side, I have carefully gone through the entire materials available on record.

6. There cannot be any quarrel with regard to the submission made by the learned Counsel appearing for the Respondent that apart from ordering Attachment of the property, the Court can also order for Civil Prison to detain a person for violating the Order of the Court, if the Court deems it necessary. In the instant case, according to the learned Counsel appearing for the Appellant, the property was sold only by the Power of Attorney of the Appellant, who was not aware of the Order of Interim Injunction. Therefore, irrespective of the submissions made on either side, I am of the opinion, the Order of Attachment of the immovable property passed by the Court below itself would suffice to safeguard the interest of the Respondent and hence, detaining the Appellant in Civil Prison is not necessary. Therefore, the Order of the learned principal District Judge, Namakkal dated 13.9.2013 made in I.A. No.18 of 2013 in A.S. No.118 of 2011, ordering detention of the Appellant in Civil Prison for a term of one month alone is set aside and the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.