

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., LL.M.,
Additional District Judge,
Srivilliputtur.**

Saturday, the 6th day of January 2024

E.A. No. 2/2022

in

E.A. No. 1/2021

in

E.P. No. 11/2020

in

O.S. No. 26/2013

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Marimuthu .. Petitioner / third party / Claimant

/vs/

1) Prabhakaran .. 1st Respondent / Plaintiff

2) Subburaj .. 2nd Respondent / Defendant

This petition came before me for final hearing on 14.12.2023 in the presence of Thiru.M. Selvam, Advocate for the petitioner, and Thiru.D. Ravichandran, Advocate for the 1st respondent/plaintiff, and the 2nd respondent / defendant remains exparte and upon perusing the records and having stood over for consideration till this day, this court delivers the following

ORDER

This petition has been filed under Order 9, Rule 9 and Section 151 CPC seeking to restore E.A. 1/2021 dismissed on 26.10.2022.

1. Averments in the petition :-

The petitioner is the third party claimant. The petitioner purchased the EP schedule property from the defendant on 16.10.2015. The petitioner filed an application to implead him as party in the suit and the petition was dismissed. Hence the petitioner preferred CMP (MD) No. 3806/2020 before the Honourable High Court and the same is pending. The plaintiff and the defendant collusively filed this E.P. with this dishonest intention of cheating the petitioner. The petitioner filed an application under Order 21 Rule 97 CPC and the same was posted to 26.10.2022 for enquiry. Since the case records were submitted to the Honourable Madurai Bench of Madras High Court, the petitioner had not appeared on 26.10.2022 and the petition was dismissed. The non-appearance was not willful or wanton. Hence prays to restore E.A. 1/2021 dismissed on 26.10.2022.

2. Averments in the counter statement :-

(i) The petition is not maintainable on law and on facts. The sale deeds in Document No. 2828/15 and 2829/15 dated 16.10.2015 are forged documents created in order to cheat the plaintiff. The sale deeds are legally not enforceable. The 1st respondent / plaintiff and the 2nd respondent / defendant entered into a sale agreement on 25.07.2011 and the 2nd respondent had received advance amount of Rs.15,50,000/-. Since the 2nd respondent refused to execute sale deed, the suit in O.S. No. 26/2013 was filed. The 1st respondent filed an application in the suit to attach the property before judgment. The 1st respondent had also recorded his objections for

encumbrance regarding the schedule property with Kunnur Sub Registry. Whileso after knowing fully about the pendency of the suit, the petitioner had purchased the schedule property and the transactions are hit by lis pendens.

(ii) The application filed by the petitioner to implead him as a party in I.A. 2/2019 was dismissed on 18.07.2019. However the petitioner had not taken any steps to prefer Revision and hence the 1st respondent filed execution petition to execute the decree in O.S. No. 26/2013. Whileso in order to delay the execution proceedings, the petitioner filed E.A. 1/2021. The petition in CMP (MD) No. 3806/2020 is pending before the Honourable High Court. The claim petition was dismissed on 26.10.2022 since the petitioner failed to appear and let in enquiry. The petitioner is trying to delay the execution proceedings. Hence prays to dismiss the petition.

3. Point for determination:

- 1) Whether the petitioner has shown sufficient reason caused to restore E.A. No. 1/2021?
- 2) Whether the petition is to be allowed or not?

4. No witnesses were examined and no documents were marked on both side and the submissions made by both side heard and considered.

5. Point and answer

The petitioner is third party claimant. The petitioner admittedly filed petitions in I.A. No. 1/2019 and I.A. No. 2/2019 in O.S. No. 26/2013 to reopen and implead him as party to the suit which petitions were dismissed. It is also admitted that the

petitioner preferred CMP (MD) No. 3806/2020 against the order of dismissal of the Interlocutory applications. The petitioner, after filing of the execution petition by the plaintiff, filed an application under Order 21 Rule 97 of CPC claiming right over the E.P. Schedule property. The petition under Order 21 Rule 97 was numbered as E.A. 1/2021 and was pending for enquiry. Since the petitioner had not chosen to let in enquiry from 06.07.2022 until 26.10.2022, even though the petition was posted as no further adjournment from 28.03.2022 onwards, the petition in E.A. 1/2021 was dismissed on 26.10.2022 for default. Though the learned counsel for the 1st respondent/plaintiff detailed regarding the facts of the case and elaborated regarding how the petitioner/claimant has no right over the suit schedule property and that the sale deeds are forged documents, this court finds that since the scope of the petition in hand is very limited it is not necessary to go into the question of the right of the petitioner/claimant in E.P. schedule property in this petition.

6. As stated above, the short point to be decided in this petition is whether the petition in E.A. 1/2021 is to be restored or not. As mentioned above the E.A. 1/2021 was posted for enquiry as no further adjournment since 28.03.2022, even then the petitioner/claimant had not chosen to let in enquiry and hence E.A. 1/2021 was dismissed for default on 26.10.2022. The petitioner stated that the original case records in O.S. No. 26/2013 was submitted in the High Court and hence he had not appeared on 26.10.2022. The reason stated by the petitioner that since petition was pending before the Honourable High Court he did not appear before this court is not a

valid reason. The petitioner was not the respondent in the execution petition, on the other hand, he was claiming right over the petition schedule property and had filed claim petition under Order 21 Rule 97 of CPC. Whileso it is the bounden duty of the petitioner to properly follow his petition and proceed along with the same. But the petitioner had not chosen such course and hence the petition in E.A. 1/2021 has been dismissed. It is the case of the petitioner that he had purchased the E.P. schedule property pending suit. Whileso it is necessary to give a chance to the petitioner to substantiate his claim over the EP schedule property lest the interest of justice will be defeated. Since the rights of the petitioner, as per his claim, is at stake and also considering the facts and circumstances of the case, this court finds that it is necessary at the interests of justice to grant one more chance to the petitioner. However considering the lethargic attitude of the petitioner this court finds it fit to impose suitable cost on the petitioner.

In the result, the petition is allowed on condition that the petitioner shall pay Rs.5000/- as costs to the 1st respondent on or before 18.01.2024 failing which the petition shall stand dismissed. For reporting compliance Call on 19.01.2024.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 6th day of January 2024.

Additional District and Sessions Judge,
Srivilliputtur.

*Additional District & Sessions Court,
Srivilliputtur,
E.A. No. 2/2022 in E.A. No. 1/2021
in
E.P. No. 11/2020 in O.S. No. 26/2013
Order (Web copy)
Date: 06.01.2024*