



C.R.P.(MD)No.3227 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.12.2023

Pronounced on : 09.01.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3227 of 2023

and

C.M.P.(MD)No.16632 of 2023

1. J.Manjula

2. J.Jeganathan

... Petitioners/
Petitioners

Vs.

1. M.Amani Abu AyubAnsari

2. Muthusamy

J.Viknesh (Died)

... Respondents/
Respondents

Prayer : This Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order passed by the learned Judge of the Additional District Court at Dindugal in E.A.No.5 of 2022 in E.P.No.129 of 2018 in O.S.No.68 of 2017 dated 05.08.2023 and allow the Revision Petition.



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For Petitioners : Mr.J.Sankara Pandian
for Mr.R.Saravana Kumar

ORDER

The Civil Revision Petition is directed against the order passed in E.A.No.5 of 2022 in E.P.No.129 of 2018 in O.S.No.68 of 2017 dated 05.08.2023 on the file of the Additional District Court, Dindigul, in allowing the application filed under Order 21 Rule 16 of the Code of Civil Procedure.

2. The second respondent/decree holder/plaintiff has filed the suit in O.S.No.68 of 2017 for recovery of money due on the promissory note and the same has been settled in Lok Adalat and consequently, an award came to be passed on 03.11.2017, whereunder, the revision petitioners/judgment debtors/defendants have agreed to pay Rs.20 lakhs with interest at 6% per annum from 03.11.2017 within six weeks from the date of that award and further agreed to retain the order of attachment till then and in case of the revision petitioners/judgment debtors/defendants' failure to comply within the time stipulated, the second respondent/decree holder/plaintiff is entitled to execute the award. Since the revision petitioners/judgment debtors/defendants have not paid the award amount, the second



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respondent/deGREE holder/plaintiff was constrained to file the execution petition in E.P.No.129 of 2018 for the sale of the property attached before judgment.

3. It is evident from the records that in the meanwhile, the first respondent/3rd party has filed a suit in O.S.No.327 of 2022 against the revision petitioners/judgment debtors/defendants claiming specific performance of an oral agreement alleging that the revision petitioners/judgment debtors/defendants have agreed to sell the property, which was already attached and sought to be sold in the execution proceedings for Rs.1,29,00,000/-, that the first respondent/3rd party has paid Rs.1,50,000/- vide cheque dated 10.08.2018 and subsequently, Rs.34,00,000/-, that the revision petitioners/judgment debtors/defendants have executed a receipt in favour of the first respondent/3rd party, that the revision petitioners/judgment debtors/defendants have subsequently received Rs.4,50,000/- and issued a receipt therefor and that since the revision petitioners/judgment debtors/defendants have failed to execute the sale deed, the first respondent/3rd party was forced to file the said suit in O.S.No.327 of 2022 and the same is pending on the file of the Additional District Court/ Special Court for trial of cases under SC/ST (POA) Act, Dindigul. Pending



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execution proceedings, the first respondent/ 3rd party, who filed the suit for specific performance in O.S.No.327 of 2022, has filed a claim petition under Section 47 C.P.C., but the said petition was rejected by the executing Court and challenging the same, the first respondent/3rd party along with his wife has preferred a revision in C.R.P.(PD)(MD)No.869 of 2019 before this Court and during the pendency of the revision, the first respondent/3rd party and the second respondent/deGREE holder/plaintiff have entered into a compromise, whereunder, the first respondent/3rd party and his wife have agreed to pay the award amount of Rs.20 lakhs to the second respondent/deGREE holder/plaintiff and on that basis, a joint compromise memo came to be filed before this Court and recording the same, the civil revision petition was disposed of vide order dated 06.08.2019.

4. It is not in dispute that the first respondent/3rd party has paid the entire award amount and the same was received by the second respondent/deGREE holder/plaintiff as full satisfaction of the award. Thereafter, the first respondent/3rd party has filed the above application in E.A.No.5 of 2022 under Order 21 Rule 16 C.P.C. seeking orders to transpose him as a decree



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holder and permit him to proceed with the execution proceedings. The revision petitioners/judgment debtors/defendants have filed a counter statement raising objections that the provision of Order 21 Rule 16 C.P.C. can only be invoked by the joint decree holders and not by the alleged assignee of the decree, that the assignment made between the decree holder and the 3rd party never creates any charge over the proceedings, that the first respondent/3rd party along with his wife has already filed a suit for specific performance against the revision petitioners/judgment debtors/defendants and the same is pending and that therefore, the above application is liable to be dismissed. The learned Additional District Judge, after enquiry, has passed the impugned order allowing the application and thereby permitted the first respondent/3rd party to transpose himself as the decree holder and proceed with the execution proceedings. Challenging the said impugned order, the present revision came to be filed.

5. Regarding the objections of the revision petitioners/judgment debtors/defendants that Order 21 Rule 16 C.P.C. has no application to the case on hand, as the same is only applicable to the joint decree holders, the



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learned Additional District Judge, taking note of Section 146 C.P.C. and also the judgment of the Hon'ble Supreme Court in ***Jugal Kisore Saraff Vs. Raw Cotton Company Limited (AIR 1955 SC 376)***, has rejected the said contention and the same cannot be found fault with. Moreover, mere quoting of a wrong provision of law does not disentitle a party from claiming the relief nor the Court from granting the relief claimed.

6. In the revision, the learned counsel appearing for the revision petitioners has taken a new stand that the alleged assignment requires compulsory registration, that the executing Court ought not to have permitted the first respondent/3rd party to proceed on the basis of an unregistered assignment and that therefore, the impugned order is not in accordance with law. The learned counsel appearing for the revision petitioners has relied on the judgment of the Andhra Pradesh High Court in ***K.Bhaskaram and another Vs. Mohammad Moulana and others*** reported in ***AIR 2005 AP 524*** and the judgment of this Court in ***V.Mathimugam Vs. KuilBaby Ammal and others*** passed in ***C.R.P.No.518 of 2017 dated 21.04.2023***, in support of his contention that the alleged assignment without registration is not valid transfer of the decree. But it is



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pertinent to note that the above two decisions are with respect to the decrees relating to immovable property. In *Andhra Pradesh High Court case*, the suit was for specific performance of agreement of sale, wherein, in the *Madras High Court case*, decree was for recovery of possession and mense profits. In both the cases, it has been specifically held that the assignment of decree in respect of the immovable property requires registration and as such, the same cannot be relied on, for the execution of the decree. But in the case on hand, as already pointed out, the decree is only for recovery of money and no way relates to any immovable property.

7. Admittedly, pending suit, property was attached before judgment and the same was sought to be sold in the execution. As already pointed out, the present suit is for recovery of money due on the promissory note and as such, the decree passed therein do not confer any interest or right in an immovable property and merely gives right for recovery of money that was decreed in the suit.

8. In the case of *Shanmugam Vs. Rajeswari and others* reported in **2017 6 CTC 737**, this Court has reiterated the above legal position.



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Moreover, even in case of assignment of mortgage decree in *A.G. Neuro Hospitals (P) Ltd. Vs. The Inspector General of Registration and Chief Controller of Revenue Authority and others* reported in (2020) 7 MLJ 571, a learned Judge of this Court has specifically held that assignment of a mortgage decree is not compulsorily registrable as no conveyance of immovable property is involved.

9. Considering the above, this Court has no hesitation to hold that the impugned order allowing the application to transpose the assignee as a decree holder and proceed with the execution is in accordance with law and the same cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

10. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

09.01.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



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1. The Additional District Court,
Dindigul.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.3227 of 2023
and
C.M.P.(MD)No.16632 of 2023

Dated : 09.01.2024