

Reserved on : 30.11.2015

Delivered on : 08.12.2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

**C.R.P.(NPD).No.2547 of 2015
and M.P.Nos.1 & 2 of 2015**

M.Kantha

... Petitioner

Vs.

P.Valmurthy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 07.04.2015 passed in E.A.No.8 of 2015 in E.P.No.144 of 2013 in O.S.No.7 of 2007 on the file of the Principal District Court, Thiruvallur.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.J.Alexander

ORDER

Challenging the fair and decreetal order passed in E.A.No.8 of 2015 in E.P.No.144 of 2013 in O.S.No.7 of 2007 on the file of the Principal District Court, Thiruvallur, the defendant has filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.7 of 2007 for specific performance. After contest, the trial Court decreed the suit. Aggrieved over the judgment and decree passed in O.S.No.7 of 2007, the defendant preferred an appeal in A.S.No.493 of 2008 before this Court and this Court, by judgment dated 14.03.2011, dismissed the appeal and confirmed the judgment and decree of the trial Court.

3.It was represented by the learned counsel appearing for the revision petitioner that against the judgment and decree passed in A.S.No.493 of 2008, the defendant preferred an appeal before the Hon'ble Supreme Court and that the Apex Court had dismissed the Special Leave Petition.

4.Pursuant to the decree passed in O.S.No.7 of 2007, the plaintiff filed an Execution Petition in E.P.No.144 of 2013. In the said Execution Petition, the revision petitioner/defendant filed an application in E.A.No.8 of 2015 under Section 47 of the Civil Procedure Code to declare the decree passed in O.S.No.7 of 2007 as nullity, nonest and inexecutable. In E.A.No.8 of 2015, the defendant has stated that the conclusion reached by the trial Court that she has executed a valid Agreement for sale under Ex.A1 in favour of the respondent is perse illegal and nonest in the eyes of law.

Further, she has stated that the respondent/plaintiff has not come to the Court with clean hands. Further, the petitioner has sought to declare the decree passed in O.S.No.7 of 2007 as nullity, nonest and inexecutable.

5.The respondent/plaintiff filed his counter wherein he has stated that the trial Court as well as the High Court had taken into consideration the oral and documentary evidences let in by the parties and rightly decreed the suit. In these circumstances, according to the plaintiff, when the trial Court as well as this Court had considered all the issues and decreed the suit, the application filed by the defendant under Section 47 of the Civil Procedure Code is liable to be dismissed.

6.The Execution Court, taking into consideration the case of both parties, dismissed the application finding that the defendant has indigenously filed the present petition under Section 47 of the Civil Procedure Code and tried to re-agitate the issue.

7.Mr.R.Thiagarajan, learned counsel appearing for the petition submitted that the Execution Court should have taken into consideration the case of the defendant and allowed the application when the suit agreement itself is perse illegal and nonest in the eyes of law.

8. In support of his contention, the learned counsel appearing for the petitioner relied upon the following judgments:

(i)(2004) 8 Supreme Court Cases 706 [Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule (Dead) through LRs. and others] wherein the Hon'ble Supreme Court held as follows:

“The main question which arises for our consideration is whether the decree passed by the trial Court can be said to be “null” and “void”. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.”

(ii)(2002) 9 Supreme Court Cases 28 [Government of Orissa Vs. Ashok Transport Agency and others] wherein the Hon'ble Apex Court held

as follows:

“Under Section 47 of the Code, all questions arising between the parties to the suit in which the decree was passed or their representatives relating to the execution, discharge or satisfaction of decree have got to be determined by the Court executing the decree and not by a separate suit. The powers of the Court under Section 47 are quite different and much narrower than its powers of appeal, revision or review. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that the executing Court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing. In the case on hand, the decree was passed against the defendant M/s.Orissa Mining Corporation (Alloys) Ltd., which was a subsidiary of Orissa Mining Corporation Ltd., and later merged with it as its Charge Chrome Division which was taken over by the Government of Orissa, without seeking leave of the Court to continue the suit against the Government of Orissa upon whom interest of the defendant devolved and impleading it. Such an omission would not make the decree void ab initio so as to invoke Section 47 of the Code and entail dismissal of execution. The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any

other remedy available under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as it has no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.”

(iii)(1996) 4 Supreme Court Cases 178 [Urban Improvement Trust, Jodhpur Vs. Gokul Narain (Dead) by LRs. and another] wherein the Hon'ble Supreme Court held that if a decree is found to be a nullity or non-est its validity can be set up even at the stage of execution or in a collateral proceeding.

(iv)(1994) 1 Supreme Court Cases 1 [S.P.Chengalvaraya Naidu (Dead) by LRs. Vs. Jagannath (Dead) by LRs. and others] wherein the Hon'ble Supreme Court held as follows:

“The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence”. The principle of “finality of litigation” cannot be pressed to the extent of

such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. 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, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.”

9.Countering the submissions made by the learned counsel appearing for the petitioner, Mr.J.Alexander, learned counsel appearing for the respondent submitted that when the trial Court as well as this Court had decreed the suit and gave a finding with regard to all the issues involved in the suit, the defendant cannot re-agitate the issues which were already decided.

10.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the main contention raised by the learned counsel for the petitioner is that Ex.A1 Agreement is perse illegal and nonest in the eyes of

law and therefore, the plaintiff has not approached the Court with clean hands, in such circumstances, the trial Court as well as this Court should not have granted a decree in favour of the plaintiff.

11.It is pertinent to note that the trial Court as well as this Court has given a finding that Ex.A1 Agreement is a true and genuine document. In paragraph 8 (vi) of the judgment passed in A.S.No.493 of 2008, this Court observed that the trial Court in paragraphs - 13 and 14 of its judgment has clearly come to the conclusion that Ex.A1 is true and genuine document. Relying upon the evidence of D.W.1, this Court found that Ex.A1 is a true and genuine document. When this Court has come to the conclusion that the suit agreement is a true and genuine document, which was also confirmed by the Apex Court in the Special Leave Petition filed by the defendant, as rightly held by the Execution Court, the defendant cannot re-agitate the issue, which was already decided, not only by the trial Court, but also by this Court and which was confirmed by the Hon'ble Supreme Court.

12.There is absolutely no dispute with regard to the ratios laid down in the judgments relied upon by the learned counsel for the petitioner. However, since the facts and circumstances differs from the case on hand,

the said judgments are not applicable to the present case.

13. Since the issues now raised in the Section 47 application were already decided by the trial Court as well as by this Court, I am of the considered view that the dismissal of the application by the Execution Court is just and proper.

14. In these circumstances, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes

08.12.2015

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Note: Issue order copy on 09.12.2015.

To

The Principal District Court,
Thiruvallur.

M.DURAIWAMY,J.
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C.R.P.(NPD).No.2547 of 2015
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