

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

CORAM

THE HON'BLE Ms. **JUSTICE K.B.K.VASUKI**

CRP (NDP) No.3292 of 2009

1.G.Tamilselvi

2.G.Uma Maheswari

3.G.Bhuvaneswari

... Petitioners

vs.

1.M.Jagadambal

2.M.Baskar

... Respondents

Civil Revision petition is filed under Section 115 of the Code of Civil Procedure against the judgment and decree dated 19.8.2009 made in EA.No.704 of 2003 in EP.No.69 of 2003 in OS.No.690 of 1995 on the file of the Principal District Munsif, Cuddalore.

For Petitioners : Mr.K.A.Ravindran

For Respondents : Mr.T.S.Baskaran

ORDER

The plaintiffs in OS.No.690/95 and the petitioners in EP.69/2003 are the petitioners herein.

2.For the sake of convenience, the parties are referred to in this petition as per their rank in the suit.

3.The petitioners filed the suit in OS.690/95 for partition and separate possession of their 3/28th share and for mesne profit. The trial court granted exparte preliminary decree and final decree and the plaintiffs, on the strength of the same, filed 2 E.Ps. one for delivery of

possession of the property and another for attachment and sale of immovable property for recovery of mesne profits.

4. Pending EP.69/2003, the defendants/judgment debtors have come forward with an application in EA.704/2003 under section 47 CPC to determine the executability of the decree and to declare it as nullity and unenforceable on the ground that there was a complete discharge and satisfaction of the decree, in view of out of court settlement between the parties. It is contended in the application that pending suit, village panchayat was convened and the parties entered into an arrangement on 10.2.2002 in the presence of the counsellors and village panchayatdars and the same was reduced into writing and the written arrangement was also signed by both the parties. The learned counsel for the defendants has, in the course of his argument, also drawn the attention of this court to the sale deed dated 28.1.2005 executed by the petitioners and the respondents 1 and 2 jointly in favour of one third party in respect of item 1 of the suit schedule property. It is therefore contended that in view of the arrangement and subsequent sale of the property, which is the subject matter of the suit, no other property is available for partition and the decree is completely discharged and satisfied.

5.The relief sought for in the application was seriously opposed by the plaintiffs by denying any partition arrangement and by denying their signature in the written partition arrangement dated 10.2.2002. According to the plaintiffs, no panchayat was convened and they never participated in any panchayat and the validity of the decree in the suit cannot be gone into in the application filed under section 47 CPC. It is also their contention that even otherwise, the arrangement, having not been recorded by the Executing Court, is not valid in law and the landlords are entitled for the decree of partition and separate possession in respect of their share.

6.The Executing Court by the impugned order dated 19.8.2009, accepted the theory of arrangement raised by the judgment debtors and accordingly held the decree to be satisfied and declared it as nullity and unenforceable in law. Aggrieved over the same, the plaintiffs/decreed holders have preferred the present Civil Revision Petition before this court

7.Heard the rival submissions made on both sides and perused the materials placed before this court.

8.The perusal of the records reveal that the suit was filed by the first plaintiff for herself and also on behalf of the erstwhile minor children. As far as the defendants are concerned, they did not contest

either at preliminary decree stage or at final decree stage and remained exparte. The plaintiffs/decreed holders by way of preliminary decree in OS.690/95 and final decree in I.A.No.934/2001 in O.S.690/95 were granted 3/20th share in respect of the suit items and allotted the entire item 1 and a portion of item 3 towards 3/20th share in respect of suit schedule properties. Out of court settlement was allegedly entered into between the parties on 10.2.2002 during the pendency of the final decree proceedings and the same was brought into light only in the execution proceedings, that too at the time of section 47 CPC proceedings, arising out of which is the present Civil Revision Petition. Before entering into the settlement, the first plaintiff did not obtain any permission from the court concerned, for entering into one such arrangement on behalf of the minor plaintiffs 2 and 3/her children. It is not the case of the plaintiffs that Ex.P1 registration copy of the written partition arrangement dated 10.2.2002 was signed by the first plaintiff for herself and also on behalf of the minor plaintiffs. The parties have also not approached the Executing court by way of separate application to record the settlement under Order 21 Rule 2 CPC, in view of Order 21 Rule 3 C.P.C, as per which, any compromise neither certified nor recorded, shall not be recognised as decree by a competent court. It is held so by the Hon'ble Supreme Court in the judgment reported in **AIR 2000 SC 2757 (Lakshmi Narayanan v. S.S.Pandian)**.

9.As far as the plea of out of court settlement is concerned, the same having not been entered into by the first plaintiff after obtaining permission from the concerned court, insofar as the minor plaintiffs are concerned and having not been signed for herself and also on behalf of the minors and having not been certified and recorded by the Executing Court, the decree cannot be held to be discharged or satisfied and the same is in my considered view, still enforceable in law.

10.Regarding the contention of subsequent sale of the property, the learned counsel for the defendants/judgment debtors produced the copy of the sale deed dated 28.1.2005 purported to be executed jointly by both the parties in favour of one third party in respect of item 1 of the suit property. However, the same was signed only by the first plaintiff and not signed by her on behalf of herself and also on behalf of her minor children/plaintiffs 2 and 3. If at all it is binding only on the first plaintiff and defendants and not erstwhile minor plaintiffs. Though the learned counsel for the defendants submitted that other suit items were also sold jointly, no copy of the sale deed was produced before this court in support of such contention, as such, the same is not binding on the erstwhile minor plaintiffs 2 and 3.

K.B.K.VASUKI, J.

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11.Thus, for the discussions held above, the impugned order of the Executing court warrants interference by this court.

12.In the result, this Civil Revision Petition is allowed by setting aside the impugned order and by directing the Executing Court to proceed with the Execution proceedings in the manner known to law. No costs.

30-04-2015.

Index: Yes/No
Internet:Yes/No
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To
The Principal District Munsif, Cuddalore.

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