HON'BLE SRI JUSTICE R.KANTHA RAO

C.R.P.Nos.1297 of 2009 & 4681 of 2008

COMMON ORDER

CRP No.1297 of 2009 is directed against the order dated 25.2.2009 passed in E.A.No.64 of 2008 in E.P.No.7 of 2008 in O.S.No.3369 of 2001 by the District Judge, Chittoor.

CRP No.4681 of 2008 is directed against the order dated 20.08.2008 passed in E.P.No.7 of 2008 in O.S.No.3369 of 2001 by the District Judge, Chittoor.

Since the issue involved in both the Civil Revision Petitions is one and the same, they are being disposed of by this common order.

Heard learned counsel appearing for the petitioner-plaintiff and learned counsel appearing for the respondents-defendants.

The revision petitioner is the plaintiff and respondents are the defendants. The plaintiff instituted suit for recovery of amount and the same was decreed on 21.11.2001. After obtaining decree, the plaintiff filed O.E.P.No.7 of 2008 under Order 21 Rules 54, 64 to 66 read with 136 CPC before the District Judge-cum-MACT, Chittoor, for attachment of EP schedule properties of the JDR and for sale of the same for realization of the amount. The EP schedule properties were attached and attachment was effected on 22.05.2008. Thereafter, the matter was posted for filing of sale encumbrance certificate. The sale papers and encumbrance certificate disclose that respondent No.1/JDR No.1 alienated the property on 29.12.2007 in favour of his unmarried daughter D.Jhansi. Thereupon, the office of the District Judge took an objection as to bringing the attached properties for sale as the same were not shown in the name of the JDrs.

The decree holder argued before the Executing Court that the transfer made by the judgment debtor No.1 in favour of said Jhansi on 29.12.2007 is a fraudulent transfer and the same was made with an intention to defraud the rights of the decree holder.

In support of his contention, learned counsel appearing for the petitioner-decree holder, relied on the decision reported in *Sultan Ahmad v Rashid Ahmad and others*[1], wherein it is held as follows:

> "Where the sale deed was executed by the plaintiff for the purpose of saving the property from the creditors and in that conspiracy the defendant was also a party, the both parties being in pari delicto neither the plaintiff nor the defendant could be permitted to take advantage of such transaction."

He further relied on the judgment reported in *Nawab Singh v. Daljit Singh*[2], wherein it is held as under:

> "Any person who comes to seek relief from a

> Court of law should not be a party to a fraud, and if both parties are in pari delicto the Court should decline to help either party and let things remain as they are and let both parties reap the consequences of their own fraud and dishonesty. It is further held that the parties are in pari delicto the Courts will not assist the illegal transaction in any respect, that is, the person who asks the Court to do something will fail; and in all cases where the plaintiff is relying on the deed, the defendant is entitled to give evidence of the circumstances under which the document came into existence and when these circumstances include an allegation of a general fraud by both plaintiff and defendant, the particulars of that fraud can be pleaded by the defendant. It is then the duty of the Court to look into the matter, and if the Court comes to the conclusion that the parties were acting together with a view to perpetrating a fraud and did in fact perpetrate the fraud, and that there is no difference in the degree of guilt of the plaintiff and that of the defendant, the duty of the court is not to assist either party. An heir of a party to a fraud is in the same position and as against him also the other party is entitled to raise the question of the fraudulent nature of the transaction when the fraud which has been partially carried out is sought to be completed."

In the above two cases, fraudulent transfer was challenged by filing suits. In the instant case, EP was filed on 6.2.2008. The Executing Court effected the attachment on 22.05.2008. But the sale deed was executed on 29.12.2007 i.e., prior to filing of the E.P. Therefore, the ratio laid down in the above two cases is not applicable in the present case.

Learned counsel appearing for the revision petitioner-decree holder further relied on the decision of this Court in *Amanana Venkataratnam and others v. Nadikoppula Seetharamaswamy (died) and others*[3].

In this case also, fraudulent transfer was challenged by a separate suit; the property was attached before the Judgment; and by the date of sale deed, the property was attached before judgment. Therefore, this decision is also not applicable to the facts of the present case since, in the instant case, the first respondent-Jdr executed the sale deed even prior to filing of the execution petition.

As rightly held by the Executing Court that since prior to filing of the execution petition, JDR No.1 executed sale deed in favour of his unmarried daughter D.Jhansi, the property can be attached and therefore, the Executing Court dismissed the petitions filed for setting the impugned order and to reopen the EP to take further steps. I do not find any perversity or illegality in the impugned orders and it needs no interference by this Court in the revisions.

Accordingly, both the Civil Revision Petitions are dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE R.KANTHA RAO

15th March, 2016

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[1] **AIR 1990 ALLAHABAD 47**

[2] **AIR 1936 Allahabad 401**

[3] **2015(6) ALT 382**