IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.4246 of 2011
and
M.P.No.1 of 2011

1.K.Kumaresan

2.K.Parvathi .. Petitioners

Vs.

1.M/s.Suryalakshmi Finance Ltd.,
By its Managing Director,
K.Eswaramoorthy,
63- Akilmedu Street,-4,
Erode.

2.K.Murugesan

3.M.Ranjana .. Respondents
(Notice to the 2nd and 3rd respondents may be dispensed with since they were set exparte before the Execution court)

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 19.08.2011 passed in E.A.No.153 of 2009 in E.P.No.325 of 2004 in O.S.No.618 of 2001, on the file of the learned 1st Additional Sub Court, Erode and District.

For Petitioners : Mr.I.C.Vasudevan

For Respondents : Mr.V.S.Kesavan (for R1)

R2 and R3 – set exparte

ORDER

The 3rd parties / claimants in E.P.No.325 of 2004 are the Civil Revision Petitioners before this Court, challenging the order in E.A.No.153 of 2009 in E.P.No.325 of 2004 in O.S.No.618 of 2001, dated 19.08.2011, on the file of the 1st Additional Subordinate Judge, Erode.

2.The case of the petitioners/3rd parties/ claimants is that both are the husband and wife respectively and the 1st petitioner has purchased the item No.1 of the suit schedule mentioned properties in the E.P.No.325 of 2004 for valuable sale consideration of Rs.1,30,800/- and the 2nd petitioner purchased the item No.2 of the schedule mentioned properties by paying the sale price of Rs.76,500/- and the said properties were purchased through the registered sale deeds in Document Nos.2671/2006 and 2672/2006 respectively on

08.09.2006. Right from the purchase of properties, they were in possession and enjoyment of the schedule mentioned properties.

3.It is the further case of the petitioners/3rd parties claimants that while being so, they were received the notice issued by the 1st respondent herein dated 04.12.2008 and in the said notice dated 04.12.2008, it was stated that both item of properties were attached as per the orders on 30.08.2001 in I.A.No.661 of 2001 in O.S.No.618 of 2001, on the file of the learned 1st Additional Subordinate Judge, Erode. In the said notice, it was further alleged by the 1st respondent that these petitioners, who are the 3rd parties claimants were colluded with the 2nd respondent and executed the sale deed on 08.09.2006 in respect of the attached properties made by the Court on 30.08.2001.

4.On receipt of the above notice dated 04.12.2008, the petitioners were made factual things in the Court and made enquiries and it was revealed and shocking to the petitioner that the schedule mentioned properties have been brought on sale in the above Execution proceedings by the 1st respondent herein. It is further states that the petitioners were bonafide purchasers of the schedule mentioned properties for valuable consideration. The 2nd respondent did not revealed the attachment order of the Executing Court in respect of the Execution of sale deeds. The petitioners also stated that the 2nd respondent declared that the schedule mentioned properties were free from encumbrance, trusting the words of the 2nd respondent, who was the Ex-chairman of Surampatti Municipality and a famous and prominent personality, the petitioners were purchased the schedule mentioned properties from the 2nd respondent without knowing the factual position and also in respect of attachment of order made by the Court, since, the 2nd respondent is a well-off person having sufficient means and liquidated sum to discharge the decree amount. Therefore, the petitioners approached the learned 1st Additional Subordinate Judge, Erode and filed petition in E.A.No.153 of 2009, on the following grounds:

> "1.The petitioners are bonafide purchasers of the schedule mentioned properties for value without notice of the order of attachment over the same.
>
> 2.The true and correct value of the schedule mentioned properties have not been stated in the above Execution petition and they are under valued by the 1st respondent herein. The 1st petitioner has paid the sale price of Rs.1,30,800/- and the 2nd petitioner has paid the sale price of Rs.76,500/- on 08.09.2006. At present the

prices of the schedule mentioned properties escalated and multiplied many times.

3.The other items of the properties in the Execution petition i.e. item 4 to 6 would alone fetch more than Rs.15,00,000/- and therefore there is no necessity for bringing all the properties on sale and the schedule mentioned properties could be excluded from the purposed sale.

4.There is no claim in respect of item 4 to 6 of the above Execution petition.

5.The 2nd respondent is capable of discharging the decree amount and on his failure to do so, the properties under item 4 to 6 of the execution petition above could be brought on sale.

6.To show their bonafides that is the petitioners are not collusive with the 2nd respondent, the petitioners have initiated criminal proceedings against the 2nd respondent.

7.After the sale of properties of item 4 to 6 of the Execution petition, if such sale price is insufficient then sale against the other properties could be proceeded by the 1st respondent.

8.The intention of the 1st respondent in bringing all the properties for sale is malafide.

9.The schedule mentioned properties are not liable for attachment."

Therefore, the petitioners prayed the Executing Court namely, the learned 1st Additional Subordinate Judge, Erode to allow the claim petition of the petitioners and to release the schedule mtntioned properties from attachment and sale.

5.On receipt of the notice in the above E.A.No.153 of 2009, the 1st respondent has filed his counter, since both the petitioners were purchased the properties by way of separate sale deeds and they were not having any joint interest in the suit property. Therefore, the claim filed by both the petitioners in a single petition is not maintainable and further for which suitable reliefs also not sought for in the petition and hence the same is liable to be rejected in limine.

6.The 1st respondent also states that the petitioners are none other than the own brother and brother's wife of the 2nd respondent, therefore, these petitioners were well known about the transactions happened between the respondents 1 and 2 in the suit in O.S.No.618 of 2001.

7.It is the case of the 1st respondent/plaintiff is that the respondents 2 and 3 who are the defendants 1 and 2 in O.S.No.618 of 2001 were borrowed amount from the 1st respondent and they failed to repay the said amount. Therefore, the 1st respondent/ plaintiff has filed a suit in O.S.No.618 of 2001 before the learned 2nd Additional

Subordinate Judge, Erode and obtained the decree on 13.09.2004 itself. Only to defraud the 1st respondent, the respondents 2 and 3 were colluded themselves and executed the sale deed on 08.09.2006 in favour of these petitioners, since a decree was passed on 13.09.2004 in O.S.No.618 of 2001 by the learned 2nd Additional Subordinate Judge, Erode, when the 1st respondent/plaintiff has filed application in I.A.No.618 of 2001 for attachment of their properties before judgment and the learned 2nd Additional Subordinate Judge, Erode was pleased to ordered the attachment of suit schedule of properties, both items of suit schedule of properties on 30.08.2001 and the same was made absolute and later, on 13.09.2004 the suit itself was decreed in favour of the 2nd respondent/plaintiff.

8.Only with an aim to defraud the 1st respondent/plaintiff, the respondents 2 and 3 purposely created the impugned sale deed dated 08.09.2006. Though the decree was passed against the respondents 2 and 3 in O.S.No.618 of 2001 on 13.09.2004 i.e. before 2 years of alleged sale deed dated 08.09.2006.

9.The 1st respondent also states that as per Order 38 Rule 5 of CPC, any alienation happened subsequent to the attachment is void and hence the sale deeds alleged to relied upon by the petitioners/3rd parties is only created and subsequent to the attachment and hence they cannot simply escape and turned round and saying that they are the bonafide purchaser of the valid and valuable consideration of the suit schedule of properties.

10.The 1st respondent also states that only to restrained the claim made by the 1st respondent/plaintiff, the respondents 2 and 3 were set up these petitioners and violating the decree dated 13.09.2004 was executed the sale deed on 08.09.2006. Therefore, the 1st respondent prayed for dismissal of the petition in E.A.No.153 of 2009. The respondents 2 and 3 who are the defendants/judgment debtors were not appeared before the Court in E.P.No.325 of 2004, on the file of the learned 1st Additional Subordinate Judge, Erode. No counter affidavit has been filed in E.A.No.153 of 2009 by the respondents 2 and 3.

11.Considering the case, the learned 1st Additional Subordinate Judge, Erode dismissed the petition by stating that the petitioners are not the bonafide purchasers and they were defraud the Court and purposely purchased the properties from the respondents 2 and 3.

12.The learned Judge also states that the examination of the PW1 Mr.Kumaresan, who is the 1st petitioner, he himself admitted in his examination in the petition in E.A.No.153 of 2009 that when they verified the Encumbrance Certificate in respect of the properties on the date of purchase of the properties in the year 2006, he came to know that the suit property was ordered by attachment. PW2 Parvathi, who is the 1st petitioner's wife also states that before purchasing the properties on 08.09.2006 they were not verified the Encumbrance Certificate in respect of schedule mentioned properties. Since, both the petitioners were purchased the properties only through the broker and they were not contacted the 2nd respondent, but on the other hand, PW1 deposed that before sale, the Encumbrance Certificate was verified, which the attachment was not known. But, he has not filed any Encumbrance Certificate.

13.The documents Ex.P1 to Ex.P10 filed by the petitioners are all does disclose, the Encumbrance Certificate has produced before the Court. The learned Judge also considered the judgment passed by this Court categorically held in the case of ***S.Ravikumar and others v. R.M.Manivasagam and others*** reported in ***2010 (5) CTC 580*** and in the case of ***C.Subramanian v. N.Chockalingam Asari and another*** reported in ***2011 (2) CTC 401***. As per the above judgments rendered by this Court which is made clear that the attachment of property by the Court and registration of sale deed have no effect and on the basis of sale deed a party cannot plead as bonafide purchaser.

14.The learned counsel appearing for the petitioners were relied upon the judgment in the case of ***K.J.Prakash Kumar and others v. Rasheeda Yasin and another*** reported in ***2009 2 LW 376*** in which as per the Order 21 Rule 66 of CPC, the sale of property, a portion of the property alone to be sold which is necessary to satisfy the decree, but in the said judgment is not applicable to the present case. Therefore, the learned Judge has dismissed the application on 19.08.2011. Challenging the said order, the present Civil Revision Petition has been filed by the petitioners before this Court.

15.I heard Mr.I.C.Vasudevan, learned counsel appearing for the petitioners and Mr.V.S.Kesavan, learned counsel appearing for the 1st respondent and perused the entire records.

16.It is the case an example how the parties are acting themselves as bonafide purchasers and to cheat the Court and the litigants. Admittedly a suit for recovery of amount of Rs.1,87,000/- in O.S.No.618 of 2001 was filed by the 1st respondent against the respondents 2 and 3, who are the defendants 1 and 2 before the learned 2nd Additional Subordinate Judge, Erode.

17.The respondents 2 and 3 who are the defendants 1 and 2 in the said suit were appeared before the learned 2nd Additional Subordinate Judge, Erode, through their advocate M/s.S.Doraisamy, R.Palanisamy and Takies Subramaniam and the said suit was decreed on 13.09.2004. The decree in O.S.No.618 of 2001 as follows:

"jPh;g;ghiz

1) thjpf;F gpujpthjpfs; U:/1.87.000-?Kk;. nkYk; mry; U:/1.13.200-?f;F jhth njjpapypUe;J jPh;g;g[njjptiu 15# tl;oa[k;. jPh;g;ghiz njjpapypUe;J bjhif brYj;Jk; ehs;tiu 9# tl;oa[lDk; nrh;j;J brYj;j ntz;Lk; vd;W cj;jutplg;gLfpd;wJ/

2) ,t;tHf;fpd; brytp[j; bjhifahd U:/20.050/50-? thjpf;F. gpujpthjpfs; brYj;j ntz;Lk; vd;W cj;jutplg;gLfpd;wJ/"

18.Pursuant to the decree passed on 13.09.2004, the 1st respondent, who is the plaintiff in the suit has filed an Execution Petition in the year 2004 itself in E.P.No.325 of 2004. While pendency of the above Execution Petition with an aim to defraud the 1st respondent/plaintiff and the Court purposely the 2nd respondent, who is the owner of the property has executed a sale deed on 18.09.2006 that is exactly after two years of the decree dated 13.09.2004 and the pendency of the Execution Petition in favour of these petitioners in favour of the petitioners/3rd parties claimants, who are none other than the own brother and brother's wife of the 2nd respondent. Knowing fully well that already the Court has passed an order of attachment in respect of both items of the properties on 30.08.2001 itself in I.A.No.661 of 2001 in O.S.No.618 of 2001 and the same is recorded in the Registrar office and the 2nd respondent not only cheat the Court, but totally violating the decree dated 30.08.2001, the said sale deed was executed on 2006 by the 2nd respondent in favour of these petitioners. When the order of attachment was passed in respect of both items of properties in I.A.No.661 of 2001 dated 30.08.2001, how the 2nd respondent having right and power to execute the sale deed to the 3rd parties, namely, the petitioners who are the own brother and brother's wife of the 2nd respondent. Hence, it is made clear that it is totally amounts to cheating on the 1st respondent / plaintiff and also the violation of the decree passed by the learned 2nd Additional Subordinate Judge, Erode, in I.A.No.661 of 2001.

19.Apart from this, it is made clear without the collusion of the Sub Registrar office, the 2nd respondent shall not be executed the sale deed on 08.09.2006, since when the competent Civil Court namely the 2nd Additional Subordinate Judge, Erode has ordered the attachment of the suit schedule of properties in I.A.No.661 of 2001, dated 30.08.2001, which was also recorded in the Registrar office, how the Sub-Registrar of the particular registrar office has registered the sale deed executed by the 2nd respondent in favour of these petitioners/3rd parties claimants. Therefore, the Sub-Registrar, functioning at the time of the execution of the sale deed dated 08.09.2006 functioning as the Sub-Registrar in the said office had also committed fraud on the Court and violating the Court orders. Therefore, the higher officials of the registering authority should take appropriate action against the Sub-Registrar who registered the sale deed on 08.09.2006.

20.It is the case of the petitioners/3rd parties that they are the bonafide purchasers of the properties. It is a common knowledge that if a person has purchased the properties from the land owners with nil Encumbrance, then they may called as the bonafide purchasers, but the case in hand the petitioners who are none other than the own brother and wife of the 2nd respondent and also knowing about the Court proceeding purchased the property from the 2nd respondent cannot now say that they are the bonafide purchasers.

21.Apart from this, this Court and the Hon'ble Apex Court has categorically held in the case of ***S.Ravikumar and others v. R.M.Manivasagam and others*** reported in ***2010 (5) CTC 580*** and in the case of ***C.Subramanian v. N.Chockalingam Asari and another*** reported in ***2011 (2) CTC 401***, the Hon'ble Supreme Court very clearly held that the settlement deed executed by the defendants in favour of their sons after filing of execution petition would clearly show the fraudulent intention of defendant to defeat bonafide claim of the plaintiff. Therefore, the settlement deed executed by the defendant in favour of their sons is hit by Section 53 of Transfer of Property Act. The judgment rendered by this Court held that the sale deed was executed after the order of attachment and the Registration of any sale deed subsequent to attachment of property by Court would have no effect. Both the judgments were squarely applicable to the 1st respondent's case, since only with an aim to have the fraudulent intention to defraud the 1st respondent/plaintiff, the 2nd respondent had executed a sale deed after the decree dated 13.09.2004, and after filing the execution petition in E.P.No.325 of 2004, which is hit by Section 53 of the Transfer of Property Act. Section 53 of the Transfer of Property Act says as follows:

> "[**53.Fraudulent transfer**.-(1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.
>
> Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.
>
> Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.
>
> A suit instituted by a creditor (which term include a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.
>
> (2) Every transfer of immovable property made

without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purpose of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.]"

22.Apart from this, it is the case of the petitioners/3rd parties is that the 1st petitioner purchased the item No.1 of the suit schedule mentioned properties in the E.P.No.325 of 2004 for valuable consideration of Rs.1,30,800/- and the 2nd petitioner purchased the item No.2 of the schedule mentioned properties by paying the sale price of Rs.76,500/- and the said properties were registered in Document Nos.2671/2006 and 2672/2006 respectively on 08.09.2006. Thus being the case, there is no joint interest in this claim made by the petitioners/3rd parties except they are the husband and wife. Hence, they should filed separate application for claim in the E.P. but they jointly filed an application in I.A.No.153 of 2009 and they have also not paid separate Court fees for their claim in the E.P.

23.The petitioners and the 2nd respondent were played fraud on the Court and also cheat the 1st respondent/plaintiff and hence the action of the 2nd respondent is total violation of the Court decree on 13.09.2004 in O.S.No.618 of 2001. The 1st petitioner in E.A.No.153 of 2009 who was examined as PW1 in his cross examination, he stated as follows:

"ehd; tpy;y';f rhd;iw vLj;J ghh;j;jnghJ 2001k; tUlk; brhj;Jf;fs; $g;jp bra;ag;gl;l tptuj;ij bjhpe;J bfhs;stpy;iy/ tpy;y';f rhd;wpy; nkw;go $g;jp tutpy;iy/ kDjhuh; rhd;whtdk; 7 tpy;y';f rhd;iw ehd; vLj;J jhf;fy; bra;Js;nsd;/ mjpy; epiwntw;W kDtpy; cs;s brhj;Jf;fs; $g;jp bra;ag;gl;Ls;sjhf gjpthfpa[s;sd/"

24.As per the above deposition, it is made clear that the schedule mentioned properties in the execution petition was already attached by the Court and the same was recorded in the registration authority. Therefore, it is made clear that knowing fully well that the schedule mentioned properties in the execution petition as well as in the suit were made attachment by the competent Civil Court on 30.08.2001 and the same was recorded in the registration authority, but, the petitioners were purposely purchased the properties and now they come forward by saying that they are the bonafide purchasers. Therefore, the petitioners, who alleged to be bonafide purchasers have no legal right to made 3rd parties claim in the execution petition in E.P.No.325 of 2004. Therefore, they have to suffer the order passed by the learned 2nd Additional Subordinate Judge, in E.A.No.153 of 2009. The very filing of the unnecessary petition in E.A.No.153 of 2009 is put the 1st respondent/plaintiff to suffer for the past 8 years, therefore, it should be compensated by the petitioners by way of cost at the rate of Rs.50,000/- to the 1st respondent/plaintiff/decree holder.

25.The 2nd respondent, who know very well about the attachment order dated 30.08.2001 and the decree dated 13.09.2004 which was passed in the presence of the respondents 2 and 3 who are the defendants 1 and 2 and their counsel and also knowing about the pendency of the execution petition in E.P.No.325 of 2004, only with an aim to cheat the 1st respondent/plaintiff and also violating the Court order executed the sale deed in favour of the petitioners. Therefore, the 2nd respondent/1st defendant/judgment debtor should pay compensation to a sum of Rs.1,00,000/- to the 1st respondent/plaintiff and the 1st respondent/plaintiff is entitled to file a contempt petition against the 2nd respondent for violation of the judgment and decree in I.A.No.661 of 2001 in O.S.No.618 of 2001 dated 30.08.2001. The learned 2nd Additional Sub-Judge, Erode is directed to entertain the said application against the 2nd respondent for the violation of the order passed by the Court and for the registration of the sale deed on 13.09.2004, i.e. after 3 years of passing the order in I.A.No.661 of 2001. The 1st respondent/plaintiff is permitted to initiate appropriate criminal proceedings before the appropriate police authorities for the illegal registration of sale deed dated 13.09.2004 against the 2nd respondent and the petitioners/3rd parties, while the competent Civil Court namely, the 2nd Additional Subordinate Judge, Erode in I.A.No.661 of 2001 in O.S.No.618 of 2001 dated 30.08.2001.

26.The registering authorities are hereby directed to register the documents on proper verification of the attachment orders if any passed by the competent Civil Courts and the same is recorded in the Registrar's office, failing compliance, the Inspector General of Registration should take appropriate action against the erring Registrars/Sub-Registrars.

27.In the result:

(a) this Civil Revision Petition is dismissed by confirming the order passed in E.A.No.153 of 2009 in E.P.No.325 of 2004 in O.S.No.618 of 2001, dated 19.08.2011, on the file of the learned 1st Additional Sub Court, Erode and District;

(b) the petitioners/3rd parties/claimants are hereby directed to pay the cost of Rs.50,000/- to the 1st respondent/plaintiff;

(c) the 2nd respondent Mr.K.Murugesan/1st defendant/judgment debtor is directed to pay a sum of Rs.1,00,000/- as cost to the 1st respondent/plaintiff;

(d) the learned 1st Additional Sub Judge, Erode, is directed to take up the E.P.No.325 of 2004 in O.S.No.618 of 2001 on day to day basis, without giving any adjournments to either parties and dispose the same within a period of 15 days from the date of receipt of a copy of this order;

(e) the Inspector General of Registration, Santhome, Chennai-4, is hereby directed to issue appropriate orders to their subordinates namely, the

Registrars and Sub-Registrars in the State of Tamil Nadu, not to register any documents, if any competent Civil Court ordered attachment in respect of the particular properties in their respective Registrar Offices. In any violation of the order of attachment by the Registrars/Sub-Registrars concern, the Inspector General of Registration is directed to take appropriate action against the erring Registrars/Sub-Registrars.

(f) the Registry is directed to send this order copy to the Inspector General of Registration, Santhome, Chennai and to the Special Government Pleader, High Court, Chennai.

28.Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

21.08.2017

vs

Index:Yes

Speaking order

To

The 1st Additional Sub Court,

Erode and District.

M.V.MURALIDARAN,J.

vs

CRP(NPD)No.4246 of 2011
and
M.P.No.1 of 2011

21.08.2017

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and
M.P.No.1 of 2011

M.V.MURALIDARAN,J.

When the order passed in the Civil Revision Petition today, Mr.R.Govindasamy, learned Special Government Pleader is present before this Court and he is taking notice on behalf of the Inspector General of Registration, Mylapore, Chennai-4 and to informed/assured this Court that he will properly instructed the Inspector General of Registration for comply the order of this Court promptly as expeditiously.

21.08.2017

vs/kal

To

The Inspector General of Registration,
Mylapore, Chennai-4.

M.V.MURALIDARAN,J.

vs

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21.08.2017