

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No. 3298 of 2014
and
M.P.No. 1 of 2014

A.Basheer Ahamed

... Petitioner

vs.

1. R.Kamala

2. Inayathul Farveen Banu

...Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and final order of the District Court, Karaikal dated 31.07.2014 made in E.A.No.91 of 2011 in E.P.No.12 of 2011 in O.S.No.19 of 2010.

For Petitioner : Mr. S. Sounthar

For Respondents : Mr.R.Thirugnanam for R1
Mr.R.Syed Mustafa for R2

ORDER

This Civil Revision Petition arises against the order passed in E.A.No.91 of 2011 in E.P.No.12 of 2012 in O.S.No.19 of 2010 by the District Court, Karaikal dated 31.07.2014.

2. The 1st respondent is the plaintiff and the 2nd respondent is the defendant in O.S.No.19 of 2010. The suit is for specific performance of the sale agreement in respect of the suit property. The petitioner is the claimant in E.A.No.91 of 2011 and the same has been filed for raising the property from attachment.

3. The facts of the case of the case is as follows:-

(i) The Petitioner has filed the execution application under Section 47 of Civil Procedure Code for raising the attachment of the schedule property. According to the petitioner, his mother, namely, Haija Beevi, his sister, namely, Ummalhutha and himself are the absolute owners of the suit schedule property. The above said property belongs to the petitioner's father, namely, Abdul Lathif by means of a registered sale deed dated 20.05.1972. On the death of the Abdul Lathif, the legal heirs of Abdul Lathif, namely, petitioner's mother, sister and the petitioner are entitled to succeed his property. However, the claim petitioner is presently in physical possession of the said property with his family. Since the 2nd respondent's husband and the petitioner were well known to each other, because of financial crises faced by the 2nd respondent's husband, the petitioner registered a sale agreement in favour of 2nd respondent's husband in respect of the above said schedule property on the promise that after

overcoming his financial crises, the 2nd respondent's husband would re-execute and register the sale deed in favour of the petitioner.

(ii) While so, the petitioner has recently come to know that the 2nd respondent's husband has executed the settlement deed vide document no.680 of 2008 dated 31.03.2008 in favour of the 2nd respondent. Thereafter, the 2nd respondent executed sale agreement in favour of the 1st respondent dated 17.03.2009, vide Doc. No.509 of 2009. The aforesaid property is now the subject matter of the award passed in O.S.No.19 of 2010.

(iii) Subsequently, the 1st respondent had obtained an award dated 14.09.2010 in O.S.No.19 of 2010 against the 2nd respondent under Section 89 of Civil Procedure Code before the Lok Adalat. For the non-compliance of the said award, the 1st respondent has filed a execution petition in E.P.No.12 of 2011. At that stage, the petitioner filed the instant application in E.A.No.91 of 2011 under Section 47 of Civil Procedure Code for “(a) raising and freeing the property from attachment for the reasons stated in the petition, (b) directing the contesting respondents to pay the cost of this proceedings (c) to pass such other and further orders. In the said application, the petitioner has specifically contended that the sale deed executed by the petitioner, his mother and sister are only shame and

nominal, executed without any consideration and the same was not acted upon. But the trial Court without appreciating the contentions of the petitioner has rejected and dismissed the application. Challenging the afore said order, the petitioner has filed the present Civil Revision Petition.

4. Per contra, the learned counsel for the 1st respondent would submit that the instant application filed by the petitioner under Section 47 of CPC is not maintainable either in law or on facts. According to the 1st respondent, the aforesaid sale deed was executed in the year 2002, the contention that the petitioner was not aware of the same cannot be accepted because the petitioner was one of the party and he has also signed in the said document. If the allegation of the petitioner is true, the petitioner has to file an appropriate suit before the competent Court to set aside the afore said sale deed. Without doing so, the petitioner has slept over the matter for nearly 9 years and hence he prays that the petition may be dismissed.

5. The learned counsel for the 2nd respondent would submit that the petitioner has no locus standi to challenge the sale deed executed by the 2nd respondent, therefore, the said contention is totally false and baseless and the same is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the respective learned counsel for the respondents and perused the materials placed on record.

7. Admittedly, after the aforesaid property was settled by the 2nd respondent's husband in favour of the 2nd respondent, the said 2nd respondent executed sale agreement in favour of the 1st respondent. For non execution of the sale deed, the 1st respondent has filed the suit and the said suit was settled before the Lok Adalat and an award has been passed. Since the said award was not complied with by the 2nd respondent, the 1st respondent has filed the execution petition. Pending execution petition, the petitioner / 3rd party, filed the instant application in E.A.No.91 of 2012. The court below after considering the contention of the parties has rightly rejected the application. Therefore, there is no reason to interfere with the order passed by the court below.

8. It is an undisputed fact that the petitioner, his mother and his sister are the absolute owners of the property. However, after sale being ordered by the court below, the petitioner came to know that the scheduled property has been settled in favour of 2nd respondent by her husband. The

2nd respondent's husband registered settlement deed in favour of his wife. In collusion with each other, the respondents 1 and 2 created a registered sale agreement dated 17.03.2009 vide document no.509 of 2009. Thereafter, the 1st respondent has entered sale agreement with the 2nd respondent to purchase the schedule mentioned property. Since the 2nd respondent has not executed the sale deed, the 1st respondent has filed the aforesaid suit and the matter was referred to the Lok Adalat and in Lok Adalat Case No.02 of 2010 in O.S.No.19 of 2010, a settlement was arrived between the parties in the aforesaid suit. The said award has become final and the said 2nd respondent has not acted upon. Therefore, the 1st respondent filed the execution petition before the District Court, Karikal for attachment and sale of the schedule mentioned property. The petitioner has filed the instant application, namely E.A.No.91 of 2011 before the District Court, Karaikal to raise the attachment order. By considering the facts and the issues raised by the petitioner in E.A.No.91 of 2011, the court below had rejected the contention and dismissed the petition filed by the petitioner.

9. Now, the learned counsel for the petitioner would urge before this Court that the sale deed executed by the petitioner in favour of 1st respondent's husband is only a shame and nominal and there is no

consideration for the aforesaid sale. The petitioner is also a party to the aforesaid sale deed and there is no dispute regarding the signature made in the said sale deed. Having been the party to the said sale deed, if the said allegation of the petitioner is true, the petitioner should have initiated action against the 1st respondent for cancellation of the aforesaid sale deed within the limitation period. Without doing so, after the lapse of more than 8 years, when the 1st respondent has filed the execution petition before the court below for the non payment of the award amount, suddenly the petitioner has filed an application to raise the attachment and to sell the property is not acceptable.

10. The petitioner has not placed any material or satisfactory explanation for the inordinate delay which has been occurred. Further, the petitioner has to file a suit within a prescribed period to raise all these grounds and to take action for cancellation of the aforesaid sale deed, therefore, the present application filed by the petitioner in the aforesaid E.P. is not at all maintainable and the contention of the petitioner is liable to be rejected. As such, the petitioner has not made out a case to interfere with the order passed by the court below.

11. In the light of the above facts, there is no error in the order passed by the District Court, Karaikkal in E.A.No.91 of 2011 in E.P.No.12 of 2011 in O.S.No.19 of 2010 dated 31.07.2014, warranting interference by this Court. In fine, the Civil Revision Petition is dismissed. There is no order as to costs. Consequently connected miscellaneous petition is closed. However, it is made clear that any observation made by the court below shall remain unaltered.

09.06.2017

Index : yes / no

Speaking Order/ Non speaking order

ssd

To
The District Court, Karaikal

D.KRISHNAKUMAR, J.

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