

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(NPD)No.2257 of 2012

Kumarasamy .. Petitioner

Vs.

Mani .. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the Petition and orders dated 21.01.2011 in E.P.No.36 of 2010 in O.S.No.139 of 2008 on the file of Subordinate Judge's Court, Udumalpet.

For Petitioner : Mrs.A.Kundavai
for Mr.C.R.Prasanan

For Respondent : Mr.R.Sreerangan

ORDER

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The petitioner herein filed this Civil Revision Petition as against the petition and orders dated 21.01.2011, made in E.P.No.36 of 2010 in O.S.No.139 of 2008 on the file of the learned Subordinate Judge, Udumalpet.

2.The revision petitioner as plaintiff filed the above suit against the respondent herein for recovery of money on the basis of pronote. After contest the said suit was decreed on 09.11.2009. Subsequent to the decree the petitioner herein filed E.P.No.36 of 2010 to realize the decree amount by putting the respondent herein in Civil Prison under Order 21, Rule 37 and Section 55 of CPC.

3.In the said execution petition, the contention of revision petitioner was that the respondent/ Judgment debtor in order to defraud the claim of the petitioner herein executed a registered release deed 29.05.2007 in respect of his share in Survey No.155/2 of N.Ellayamuthur Village. It is found from the impugned order that the revision petitioner has not established the fact that the judgment debtor/ respondent herein despite having sufficient means to pay the decree amount failed to pay the same and hence the lower Court dismissed the execution petition.

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4.On the other hand, it is contented by the revision petitioner that the Learned Sub Judge failed to take note of the registered release deed executed by the respondent herein only to evade

payment of decree amount to the revision petitioner. The Learned Counsel for revision petitioner further submitted that the release deed executed by the respondent herein is after execution of pronote which shows the intention of the respondent to defraud the claim of the revision petitioner. Hence, the Learned Counsel submitted that the Execution Court ought to have allowed the execution petition by sending the respondent herein in to Civil Prison.

5.Per contra, the Learned Counsel for respondent would submit that the Lower Court has rightly dismissed the execution petition by holding that the revision petitioner failed to prove that the respondent herein is having sufficient means to satisfy the decree amount. Therefore, the learned counsel submitted that there is no illegality in the impugned order of trial Court and the same is liable to be confirmed.

6.I heard Mrs.A.Kundavai for Mr.C.R.Prasanan, learned counsel for the petitioner and Mr.R.Sreerangan, learned counsel for the respondent and perused the entire materials available on record.

7.From the perusal of impugned order this Court would able to

find that the revision petitioner has produced the release deed executed by the respondent herein dated 29.05.2007. The pronote executed by the respondent herein is dated 16.11.2005 which is prior to the execution of release deed. But the trial Court failed to look into the release deed. The non consideration of release deed filed by the revision petitioner is not proper on the part of the Learned Sub Judge. Therefore as rightly pointed out by the Learned Counsel for the revision petitioner, when the Judgment debtor has released his share in his property to his sister, then the onus to prove whether the respondent herein is having means is to pay the decree amount is rest upon him.

8. Therefore, in my considered opinion, the Trial Court has committed an error in dismissing the execution petition and the same is liable to be set aside.

9. In the result:

- a) this Civil Revision Petition is allowed, by setting aside the order passed in E.P.No.36 of 2010 in O.S.No.139 of 2008 on the file of the learned Subordinate Judge, Udumalpet;
- b) the matter is remanded back to the learned Subordinate

Judge, Udumalpet, for fresh consideration by following the procedure under Order 20 Rule 38 and Rule 41 of C.P.C. by way of filling affidavit and evidence and pass orders;

c) the said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No cost.

19.04.2017

vs

Note: Issue order copy on 24.01.2019

Index: Yes

Internet: Yes

To

The Subordinate Judge, Udumalpet.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(NPD)No.2257 of 2012**

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