

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2443 of 2013
and
M.P.No.1 of 2013**

Shanmugam

.. Petitioner

Vs.

1.Rajeswari

2.Vijayalakshmi @ Selvi

3.Annadurai

4.Shankar

5.T.K.Natarajan

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and final order passed in E.A.No.180 of 2009 in E.P.No.150 of 2004 in O.S.No.100 of 1989, on the file of Principal District Munsif Court, Erode, dated 08.04.2010.

For Petitioner : Mr.Navin Kumar Murthi
for Mr.R.Santhanam

For Respondents : Mr.D.Selvaraju (for R1 to R4)
No Appearance (for R5)

ORDER

The present Civil Revision Petition has been filed challenging the order passed in E.A.No.180 of 2009 in E.P.No.150 of 2004 in O.S.No.100 of 1989, dated 08.04.2010 passed by the Principal District Munsif, Erode, whereby the lower Court has allowed the Petition filed by the respondents herein and consequently, set aside the Sale Deed executed in favour of the Revision Petitioner.

2.The facts leading to filing of the instant Revision Petition dates back to O.S.No.100 of 1989 whereby the plaintiff in the above suit has assigned the decree in favour of the Revision Petitioner and on strength of the said decree, the Petitioner has filed E.P.No.40 of 1997 for execution of the Sale deed. Accordingly, the said Execution Petition was allowed and to set aside the order of execution passed in E.P.No.40 of 1997, E.A.No.289 of 1998 was preferred by the legal heirs of the original owner.

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3.The filing of the said E.A. was in the name of one Mr.Anna Durai and Mr.Shankar, the 3rd and 4th respondents in the instant Revision Petition. There is no whisper as to what happened to the said

E.A.No.289 of 1998 but it has not been stated across the bar that the said E.A. was dismissed for non-prosecution. Continuing the battle, the 3rd and 4th respondents in the instant Revision Petition also included their sisters Rajeswari and Vijayalakshmi who are the 1st and 2nd respondents herein and filed a fresh E.A.No.180 of 2009 under Section 47 of the C.P.C. seeking to set aside the Execution of the Sale deed dated 13.08.2008 in favour of the revision petitioner and consequently, prayed for dismissal of the Execution Petition itself.

4.The main allegation raised by the petitioners in E.A.No.180 of 2009 is that the assignment of the decree made in favour of the revision petitioner is not registered under the Registration Act and since the same being mandatory, the assignment made in favour of the petitioner itself is not valid and is not executable under law. It was further claimed that the assignment of decree is written in insufficient stamp under the Stamp Act and the assignment of the decree is also undervalued and hence, it is not a valid document. It has also been claimed that in a single Execution Petition, the relief of execution and delivery of possession cannot be claimed and accordingly, disputed the claim of the Revision Petitioner.

5. In the counter affidavit filed by the Revision Petitioner before the lower Court, it has been stated that the present attempt by the respondents herein is nothing but a collusive proceeding and has been filed only with a malicious motive. It has also been contended that the respondents have protracted the proceedings by not appearing before the Court and also evading the notices and have deliberately allowed the matter to be decided ex parte. It has also been claimed that the previous E.A. filed by the respondent herein way back in 1998 was also dismissed and the respondents here attempting to create a second round of litigation and are only trying to make a stale claim. It has also been contended that since the sale deed itself has now been registered, the claim made by the respondents herein cannot be sustained.

6. The lower Court while considering the rival submissions, though rejecting the contentions of the then Petitioner that the assignment deed was insufficiently stamped and that more than a single relief could not be asked in a single Execution Petition, has relied on the judgment of the Andhra Pradesh High Court in ***K.Bhaskaran and another v. Mohammed Moulana (died) and others*** reported in ***AIR 2005 AP 524*** and held that non-registration

of the assignment of the decree is fatal and has allowed the Application preferred by the respondents 1 to 4 herein and set aside the Sale deed executed in favour of the revision petitioner.

7. When the present revision petition came up for admission, this Court has granted an order of interim stay and has also confirmed that the order under challenge in the present Revision has not been appealed elsewhere.

8. I have heard the arguments of Mr. Naveen Kumar Murthi for R. Santhanam, learned counsel appearing for the petitioner and Mr. D. Selvaraj, learned counsel appearing for the respondents 1 to 4 and perused the entire records.

9. Mr. Naveen Kumar Murthi, learned counsel appearing for the petitioner would strenuously contend that the finding of the Court below is palpably erroneous and incorrect since the trial Court has not interpreted the provisions of the Registration Act in the right perspective. It is the submission of the learned counsel that the trial Court has heavily relied upon the Judgment of the Andhra Pradesh High Court referred above and has come to the conclusion that

assignment of the decree is compulsorily registrable and since the same was not done, the petitioner will lose his right and the subsequent registration of the sale deed would have no legs to stand upon. It has been contended by the learned counsel that Section 17 of the Registration Act 1908 stipulates what kind of documents are registrable and has also specified certain types of documents for which compulsory registration shall not apply. It has been contended that though Section 17(1)(b) of the Registration Act makes it mandatory for registering non-testamentary instruments which create, declare, assign, limit, extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of the value of rupees one hundred rupees or upwards, in immovable property, the exemption contained in Section 17(2)(v) and (vi) should also be necessarily looked into. Section 17(2)(v) and (vi) states as follows:

“(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right or title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings] (Substituted by Act No.21 of 1929 for the words 'and any award'),"

10. It has accordingly been contended that the assignment of the decree would per se not entitle an individual to have a right or title over an immovable property and it is only through a consequential instrument of sale or transfer of title of the property would an individual derive title to a property. To support his case, the learned counsel for the petitioner relied upon a decision of the Hon'ble Allahabad High Court rendered 100 years back in ***Mumtaz Ahmad v. Sri Ram*** reported in **1913 SCC OnLine All 163 : ILR (1913) 35 All 524 : (1913) 11 All LJ 815** wherein the Hon'ble Division Bench of the Allahabad High Court, after considering the earlier decisions on the point, has concluded as follows:

"A decree not being immovable property, it has been held in the Calcutta cases noted above that the transfer of a decree does not operate to create an interest in immovable property and the deed of transfer is, therefore,

not compulsorily registrable.”

11. Accordingly, the learned counsel appearing for the petitioner would submit that a decree not being an immovable property is not compulsorily registrable. Assuming registration is required to lay hands on an immovable property, admittedly the Revision Petitioner has got a Sale deed executed in his favour in 2008 which has been set aside by the lower Court. Hence, it is submitted that the finding of the trial Court is unsustainable and deserves to be reversed.

12. Per contra, Mr.D.Selvaraj, learned counsel appearing for the respondents 1 to 4 would contend that the issue at hand stands squarely covered by the decision of the Hon'ble Andhra Pradesh High Court in a case of **K.Bhaskaran and another v. Mohammed Moulana (died) and others** reported in **AIR 2005 AP 524**. It is his submission that the assignment of a decree is compulsorily registrable since it only confers a right to obtain an immovable property and without registration of an assignment deed, even assuming a sale deed is registered, the effect of non-registration would prove fatal to any subsequent actions. To emphasise on this point, he has invited the attention of this Court to Section 49 of the Registration Act which very

clearly stipulates as to what could be effect of non-registration of documents which are compulsorily registrable. It is also his further submission that the subsequent registration of the Sale deed would be vitiated since the assignment deed has not been registered and submit that the judgment of the lower Court is absolutely correct and warrants no interference.

13.This Court is posed with the important question as to whether a deed of assignment of a decree is compulsorily registrable under the Registration Act or not.

14.For answering this issue, it is essential to look at the scheme of the Registration Act purposively. It is quite clear that the Registration Act which is almost 109 years old was enacted with the intent and purport to facilitate proper registration of documents though the Act was originally enacted in 1908, it has undergone a few changes to keep it in tune with the modern times of technology. Section 17 mandates that certain kinds of documents ought to be compulsorily registered and also provides for cases in which compulsory registration does not apply to.

15. In the present case, what has been assigned by the decree holder to the revision petitioner is only the right to derive benefits from the decree/order passed by the Court and nothing more.

16. Though the Hon'ble Andhra Pradesh High Court has held in the above mentioned case that assignment deed has to be compulsorily registered, there has not been elaborate discussions to find out the real scope of Section 17. On the contrary, the Hon'ble Allahabad High Court in **Mumtaz Ahmad v. Sri Ram** reported in **1913 SCC OnLine All 163 : ILR (1913) 35 All 524 : (1913) 11 All LJ 815** has gone into the main issue regarding the scope of Section 17 and has given a clear finding that a deed of assignment of a decree does not per se confer a right/interest in an immovable property since the decree cannot be described as an immovable property.

17. I am of the view that the judgment of the Hon'ble Allahad High Court lays down the right law and applies factually to the present issue and with due respect, I am unable to concur with the view adopted by the Hon'ble Andhra Pradesh High Court. Therefore, I hold that a deed of assignment of a decree is not compulsorily registrable under the Registration Act.

18.In the result:

(a) this Civil Revision Petition is allowed;

(b) the Judgment and decree passed in E.A.No.180 of 2009 in E.P.No.150 of 2004 in O.S.No.100 of 1989, dated 08.04.2010, on the file of Principal District Munsif Court, Erode, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

12.09.2017

Index:Yes
Speaking Order

vs

To

The Principal District Munsif Court, Erode.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
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