

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.3284 of 2016

and

C.M.P.No.16735 of 2016

M.Mahendran
S/o.Late Murthy

.. Petitioner/Respondent/Defendant

-Vs.-

S.Ramanathan
S/o.Semban

.. Respondent/Petitioner/Plaintiff

Prayer:

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908 against the fair and final order dated 09.08.2016 passed by the learned Principal District Munsif, Coimbatore in E.P.No.14 of 2013 in O.S.No.2427 of 2006.

For Petitioner : Mr.L.Mouli

For Respondents : Mr.S.Sivalinga Kesavan

ORDER

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

2.The petitioner has come up with the present Civil Revision Petition challenging the impugned order dated 09.08.2016 made in E.P.No.14 of 2013 in O.S.No.2427 of 2006, wherein the revision petitioner/judgment debtor is directed to cancel the gift deed registered in document No.3331/09 dated 08.10.2009 executed in favour of his wife Kalpana within a period of one month.

3.Originally the suit property was owned by the revision petitioner and he executed a power of attorney on 15.05.2006 in favour of one Chandramohan, the second defendant in O.S.No.2427 of 2006, who in turn sold the property in favour of the respondent/plaintiff vide sale deed dated 19.09.2006. While so, since the revision petitioner attempted to interfere with the possession of the respondent/plaintiff, he filed a suit in O.S.No.2427 of 2006 seeking permanent injunction. When that being so, the revision petitioner/first defendant executed a settlement deed in favour of his wife

Kalpna on 08.10.2009. During the course of the proceeding, a compromise was arrived at between the parties and on the basis of the said compromise the suit was decreed. The fifth clause in the said compromise reads as “that the first defendant do cancel the gift deed executed by him in favour of his wife on 8.10.2009 in respect of the suit property”. But the revision petitioner/first defendant did not comply with the said condition and hence, the respondent/plaintiff filed an execution petition in E.P.No.14 of 2013 seeking for a direction to the judgment debtor who is the first defendant in the suit to cancel the gift deed registered in document No.3331/09 dated 08.10.2009 executed in favour of his wife Kalpna within a period of one month. The judgment debtor filed a counter and contested the same stating that his wife is not co-operating for canceling the said gift deed and that she had filed a suit in O.S.No.1904 of 2013 to declare the compromise decree passed in O.S.No.2427 of 2006 as null and void. However, the executing Court after considering the contentions raised on both sides directed the judgment debtor to cancel the gift deed dated 08.10.2009 and the said order was challenged in the present revision.

4.The learned counsel appearing for the revision petitioner would submit that in pursuance of the compromise decree, the revision

petitioner/first defendant ought to have canceled the gift deed executed by him in favour of his wife. However, since his wife is not co-operating, he could not do so. Further, after filing of the execution petition, the wife of the revision petitioner has filed a suit in O.S.No.1904 of 2013 to declare the compromise decree passed in O.S.No.2427 of 2006 as null and void. Hence, the learned counsel for the revision petitioner prayed for setting aside the impugned order.

5.Resisting the same, the learned counsel appearing for the respondent would submit that the suit in O.S.No.1904 of 2013 filed by the wife of the revision petitioner was dismissed on 26.08.2015. He further submitted that the revision petitioner/first defendant can revoke the gift deed at any point of time, if it is not accepted and acted upon. The Executing Court after considering all the aspects in proper perspective came to a correct conclusion and hence, the learned counsel for the respondent prayed for dismissal of the civil revision petition.

6.Considered the rival submissions made by both sides and perused the typed set of papers.

7.The disloyal judgment debtor who failed to cancel the gift deed as per the compromise decree, even after receipt of the money from the plaintiff/decree holder and has also instigated his wife to file a suit, after receipt of the notice in the execution proceedings in E.P.No.14/2013 has come forward with the present Civil Revision Petition challenging the order passed in the execution petition.

8.The facts of the case is that originally the suit property was owned by the revision petitioner and he executed a power of attorney on 15.05.2006 in favour of one Chandramohan, the second defendant in O.S.No.2427 of 2006, who in turn sold the property in favour of the respondent/plaintiff vide sale deed dated 19.09.2006. Since the revision petitioner/first defendant attempted to interfere with the property, immediately the respondent/plaintiff filed a suit for permanent injunction in O.S.No.2427 of 2006 on the file of the learned Principal District Munsif, Coimbatore. During the pendency of the suit, the revision petitioner/first defendant executed a gift deed in respect of the suit scheduled property in favour of his wife on 08.10.2009 which would show the malafide intention of the revision petitioner to grab the property which was already sold. While so, a compromise was entered into between the parties and on the basis of the said compromise, a compromise decree was passed on

01.08.2011, wherein in clause 5 reads “that the first defendant do cancel the gift deed executed by him in favour of his wife on 8.10.2009 in respect of the suit property”.

9. Though as per the compromise, the revision petitioner/first defendant received a sum of Rs.12 lakhs vide demand draft in favour of himself and his wife and a further sum of Rs.3 lakhs by cash, thus totaling a sum of Rs.15 lakhs, he failed to cancel the gift deed executed by him in favour of his wife and thereby, he attempted to get unjust enrichment. Therefore, the respondent/plaintiff was constrained to file an execution petition in E.P.No.14 of 2013 to direct the revision petitioner/first defendant to cancel the gift deed executed by him in favour of his wife. Even though the execution Court had directed the revision petitioner/first defendant to cancel the gift deed, he did not comply with the said order and instead, he has filed the present revision challenging the order passed by the execution Court. The revision petitioner has contended that his wife is not co-operating to cancel the gift deed executed in her favour and she has filed a suit in O.S.No.1904 of 2013 to declare the compromise decree passed in O.S.No.2427 of 2006 as null and void. But as per the argument put forth by the learned counsel for the respondent, the said suit was dismissed on 26.08.2015. Furthermore, for cancellation of the

gift deed, the presence of the beneficiary is not necessary, since possession is with the plaintiff/respondent and the settlor can cancel the same at any point of time. Thus, it is evident that the intention of the revision petitioner/first defendant is only to grab the property from the lawful purchaser and attain unjust enrichment and he did not abide by the conditions of the compromise decree. The Execution Court had considered all these aspects in proper perspective and came to a correct conclusion.

10. In these circumstances, I do not find any reason to interfere with the fair and final order dated 09.08.2016 made in E.P.No.14 of 2013 in O.S.No.2427 of 2006 on the file of the learned Principal District Munsif, Coimbatore and hence, the same is hereby confirmed. Consequently, the Civil Revision Petition is dismissed as devoid of merits with a compensatory cost of Rs.10,000/- to be paid to the respondent, since this revision is a mere abuse of process of Court. Connected miscellaneous petition is also closed.

04.01.2017

pgp

Index:Yes/No

R.MALA, J.
pgp

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