



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Review Application(MD)No.114 of 2017

and

CMP(MD)No.5350 of 2017

1)M.K.Seetharaman

2)S.Jayavel

...Petitioners/Petitioners 1 & 2

vs.

1)M.K.Jaganathan

2)M.K.Parthasarathy

3)V.Jayalakshmi

4)B.K.S.Ramachandran

... Respondents/Respondents

Petition filed under Section 114, Order 47 Rules 1 and 2 CPC read with Article 227 of the Constitution of India, against the judgment in CRP.No.2233 of 2015 dated 10.04.2017 against I.A.No.189 of 2011 dated 31.08.2015 on the file of Additional Sub Court, Karur.

Prayer in CRP(MD). 2233/ 2015 :

To call for records pertaining to IA 189/2011 in OS NO. 206/2007 on the file Additional Subordinate Judge Karur and set aside fair and decreetal order dated 31/08/2015 therein and consequently strike off the plaint as being barred by law and same is an abuse of law or in alternate stay further proceedings or impose such conditions necessary for protection of creditors in IP7/1981 on file of the Subordinate Judge Karur and thus render justice.

For Petitioners : Mr.V.Anand

O R D E R

The property is admittedly a residential property. In the suit filed for partition, alleging that the plaintiffs and defendants have $\frac{1}{4}$ share each, the defendants who are the review petitioners have filed written statement stating that the 3rd defendant in the suit has released his right in the property in favour of the 1st defendant on 18.02.1981. Except this property, all the other properties of the plaintiffs were sold away by official receiver in the insolvency proceedings IP.No.7/1981.



2. Pending trial after examination of PW2, the review petitioners have taken out a petition to reject the plaint and the same was dismissed by the Trial Court and this Court in CRP confirmed the same. The said order is now sought to be reviewed on the ground that the plea of abuse of process of law as the ground for rejecting the plaint not considered. The IP is still pending as per suit register and the petition in I.A.No.215/1985 to exempt the suit property was dismissed. Therefore, the property is still vest with the official receiver. So, the suit for partition is abuse of process of law.

3. This Court has elaborately discussed about the facts of the case and dismissed the revision petition. However, unsatisfied with the reasons given by this Court, the present review application is filed pointing out that the plaintiffs have abused the process of law and therefore, the plaint has to be rejected under Order 7 Rule 11(a).

4. To buttress the said contention, it is again emphasised by the counsel for the review petitioners that the insolvency proceedings is still pending which could be clearly seen from the dismissal of I.A.No.215/1985 marked as Exhibit R15 in I.A.No.189/2011. According to the learned counsel appearing for the revision petitioners, filing a partition suit in respect of the suit property which is subject matter of IP before discharging the insolvency is abuse of process of law. However, in the written statement, the 1st defendant admits that he and the 3rd defendant had dealt with the property by executing a release deed in respect of the suit property on 18.02.1981.

5. If the plea of the revision petitioners is accepted that on filing of the insolvency petition, the suit property was vested with the official receiver and without his consent or permission, the property cannot be dealt with, then the very conduct of the revision petitioners in dealing with the property by getting a release deed from the 3rd defendant is also illegal, since admittedly the insolvency petition was filed prior to the said release deed. When the plaintiffs have made out a prima facie case to institute the suit and apparently there is no bar under law to file a suit in respect of a property admittedly inherited by the plaintiffs, the insolvency proceedings which has become staled even according to the documents relied by the review petitioners cannot be taken on its face value to reject the plaint summarily. It is all matter for trial. Only after proper appreciation of evidence, these issues can be decided. Furthermore, the revision petitioners want to carry the cross for the creditors in IP by saying that the property of the undischarged insolvent cannot be subjected to partition deed since it will defeat the interest of the creditors. Interestingly, the revision petitioners are not creditors to the plaintiff.



Therefore, no ground is made out to review the order of this Court made in CRP(MD)No.2233 of 2015, dated 10.04.2017.

Accordingly, this Review Application is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(writs)

/True Copy/

Sub Assistant Registrar

To

The Additional Sub Court,
Karur.

NBI

VB/SV/SAR4/13.07.2017/3P/2C

Rev.Applc(MD)No.114 of 2017

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