



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.01.2017**

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD) No. 173 of 2017 and
CMP(MD).No.745 of 2017

Sivagamasundari : Revision Petitioner/Appellant/
Petitioner/3rd Party
Vs.
1. Dhanaroja : 1st Respondent/1st Respondent/
1st Respondent/Petitioner/Plaintiff
2. S. Sivarajan : 2nd Respondent/2nd Respondent/
2nd Respondent/1st Respondent/
Defendant no.1

Prayer: This Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decreetal order dated 30.10.2014 made in CMA.No.1 of 2013 on the file of the learned Principal District Court, Thanjavur confirming the order passed in E.A.No.17 of 2008 in E.P.No.171 of 2007 in O.S.No.294 of 2003 on the file of the learned Principal Subordinate Judge, Kumbakonam, dated 06.12.2012.

For Petitioner : Mr. B. Jameel Arasu
For respondents : Mr.K.K. Ramakrishnan, R1
Mr. S.Vinayak - R2 in SR stage

O R D E R

This Civil Revision Petition is filed to to set aside the fair and decreetal order dated 30.10.2014 made in CMA.No.1 of 2013 on the file of the learned Principal District Court, Thanjavur confirming the order passed in E.A.No.17 of 2008 in E.P.No.171 of 2007 in O.S.No.294 of 2003 on the file of the learned Principal Subordinate Judge, Kumbakonam, dated 06.12.2012.

2. The petitioner is the third party. The first respondent filed suit in O.S.No.294 of 2003 on the file of the learned Principal Subordinate Judge, Kumbakonam, for recovery of money against the second respondent and one Ramakrishnan. Along with the suit the first respondent filed E.A.No.17 of 2008 for attachment of the property of the second respondent before Judgment. The said application was ordered and property of the second respondent was attached. The Son and wife of the second respondent filed claim petition to raise attachment on the ground that they are the owners. A compromise was entered into between respondents 1 and 2 and Ramakrishnan, whereby the first respondent agreed to give credit to Rs.41,000/- already paid by the second respondent towards Principal and agreed to receive interest at 15% per annum instead of 18% per annum.



3. The second respondent agreed that the first respondent can proceed against the property allotted to him as the value of the said property is more than Suit claim. Based on the said consent, the claim petition filed by the son of the second respondent was allowed and his properties were not attached. A decree was passed on 07.02.2007, based on the joint memo of compromise. The first respondent filed E.P.No. 171 of 2017 for the sale of property belonging to the second respondent to realize the decretal amount. The petitioner filed E.A.No.17 of 2008 to cancel the attachment, on the ground that she is owner of the property, as the same has been settled on her, by way of settlement deed, dated 28.11.2005 by second respondent, by her husband.

4. The first respondent resisted the same on the ground that second respondent suppressed the settlement of the property on his wife and fraudulently got the claim petition filed by his son allowed. The second respondent in the memo of compromise has stated that, the value of the property belongs to second respondent is more than suit claim and first respondent can proceed against that property for realization of the amount.

5. Before Execution Court, petitioner was examined as PW.1 and Ex.P17 settlement deed was marked as Ex.P1. The first respondent examined himself as RW.1 and marked Exs.B1 and B2 joint memo of compromise and decree dated 07.02.2007.

6. The learned Judge considered all the materials on record especially the evidence of petitioner as PW.1 dismissed the claim petition in E.A.No.17 of 2008, on the ground that only to prevent the first respondent from realizing the fruits of the decree, the settlement has been brought up fraudulently. The learned Judge also took note of the fact that in the settlement deed it has not been mentioned that settlement is in lieu of maintenance of the petitioner.

7. Against the said order of dismissal, the petitioner preferred CMA.No.1 of 2013. The learned Principal District Judge, Thanjavur, considered all the materials on record, dismissed the CMA confirming the order of the learned Principal District Judge, Kumbakonam.

8. Against the said order passed in CMA.No.1 of 2013, present Civil Revision Petition has been filed.

9. The learned counsel appearing for the petitioner submitted that the Courts below failed to see that the petitioner became owner long before the decree passed in O.S.No.294 of 2003 and filing of E.P.No.171 of 2007. Both the Courts below failed to see that the respondents 1 and 2 colluded together and obtained compromise decree, only with a view to defeat the interest of the petitioner, who became the owner, before the compromise decree being passed. The Courts below failed to see that petitioner is necessary party to Execution Petition and before impleading the petitioner, the first respondent obtained an order of attachment before Judgment of property.

10. I have heard the learned counsel appearing on either side and perused the materials available on record.



11. From the materials available on record it is seen that first respondent filed suit for recovery of money against the second respondent and one Ramakrishnan. Pending suit, compromise was arrived at second respondent agreed for the first respondent to proceed against the property of the second respondent to realize the decretal amount. This was reduced into writing by way of joint memo of compromise. Based on the joint memo of compromise decree was passed on 07.02.2007. The second respondent suppressed the fact that he had already settled the property on 28.11.2005 in favour of his wife / petitioner herein. It is clear that second respondent has played fraud, not only on the first respondent but also on the Court. The petitioner as PW.1 in the Execution Petition deposed that she and second respondent are residing together in the same roof, and they have cordial relationship. The second respondent is maintaining her properly. The Courts below considered these facts and also fact that settlement deed executed by the second respondent settling the property on the petitioner is not for the maintenance of the petitioner. The Courts below have given cogent and valid reason for dismissal of claim petition. The learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

12. In the result the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/TRUE COPY/

Sub Assistant Registrar

To
1. The Principal District Court, Thanjavur
2. Principal Subordinate Judge, Kumbakonam.

+1 cc to MR.K.K.Rama Krishnan, ADVOCATE, SR NO:4598
+1 cc to MR.B.Jameel Arasu ADVOCATE, SR NO:4893

trp
sva/pn/24.02.2017/3p/5c

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