



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2017

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.R.P (NPD) (MD) No.301 of 2017

Jeganatha Raja

... Petitioner/Plaintiff

Vs.

Kodavandi @ Ramachandhiran

... Respondent/Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order in E.P.No.20 of 2012 in O.S.No.139 of 2010, on the file of the Principal Subordinate Judge, Tenkasi, dated 19.09.2016.

For Petitioner : Mr.S.Ramesh

ORDER

This petition has been filed by the petitioner to set aside the order, dated 19.09.2016 made in E.P.No.20 of 2012 in O.S.No.139 of 2010 passed by the learned Principal Sub Judge, Tenkasi.

2.The petitioner is the first plaintiff. The respondent is the defendant. Originally the petitioner filed a suit in O.S.No.109 of 2009 before the learned Principal District and Sessions Court, Tirunelveli for recovery of money against the respondent and subsequently, it was transferred to the learned Principal Sub Court, Tenkasi and re-numbered as O.S.No.139 of 2009. He obtained a decree, dated 18.01.2011 against the respondent. The petitioner filed E.P.No.20 of 2012 for attachment and sale of the properties mentioned in the E.P.

3.The respondent filed counter and submitted that the properties do not belong to him and they belong to his sons as he has settled the property even before filing of the suit. The petitioner contended that the said settlement is fraudulent transaction and it is not valid as per Section 53 of the Transfer of Property Act, 1882.

4.The learned Judge considering all the materials on record and the fact that the respondent has settled the property even before filing of the suit and respondent at the time of settlement was not



judgment debtor, dismissed the E.P.No.20 of 2012.

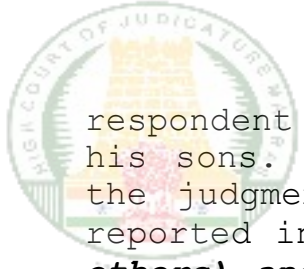
5. Against the said order of dismissal in E.P.No.20 of 2012, the petitioner has come out with the present Civil Revision Petition.

6. The learned counsel for the petitioner reiterated the averments made in the affidavit and grounds of Revision and submitted that the learned Judge failed to see the differences between the *lis pendens* and fraudulent transfer. The learned Judge ought to have seen that settlement in favour of sons of the respondent are invalid as per Sections 53 and 128 of the Transfer of Property Act, 1882. The learned Judge ought to have seen that sons of respondent are universal donees, therefore they are liable to pay the decretal amount to the petitioner. In support of the case, the learned counsel for the petitioner relied on the judgment reported in **1964 AIR (Madras) 78 (Dayanandan and another vs. Venugopal Naidu)** wherein at paragraph 3 it has been held as follows:-

"3. It is contended for the appellants that the defendants under the settlement could not be regarded as universal donees. The basis for this argument is a recital in the settlement deed that the properties which the donor might after the execution of the document acquire and the other "remaining properties" should also be taken by the donees. The lower appellate Court on the evidence before it came to the conclusion that this recital did not mean that the settlement was not in regard to the entirety of the properties possessed by Bhaktavatasala at the time he executed the document. In coming to that conclusion it was also aware of the fact that no other property was shown to have been acquired subsequently or left by Bhaktavatsala. In my opinion the lower appellate Court was right in its view that the settlement of Bhaktavatsala constituted the defendants as universal donees."

7. I have heard the learned counsel appearing for the petitioner and also perused all the materials available on record.

8. The petitioner sought for attachment and sale of the three properties. According to the petitioner, these properties belonged to the respondent. The respondent with fraudulent intention settled the property on his sons. The settlements are invalid and respondent continues to be the owner. As far as first item of the suit property is concerned in the order passed in I.A.No.110 of 2009 filed by the petitioner for attachment before judgment, it was held that it does not belong to respondent. The learned Judge considering the fact that the petitioner did not file any further proceedings against the dismissal of the application for attachment before judgment holding that the petitioner is not owner of said property. As far as items Nos. 2 & 3 are concerned, the respondent has produced documents to show that items 2 & 3 of the petition mentioned properties were already settled on his sons even before filing of suit. The



respondent was not judgment debtor when he settled the property on his sons. The learned Judge also properly considered the ratio in the judgment relied on by the learned counsel for the petitioner reported in **2011(2) TNLJ 385 (Civil) (S.Mylathal vs. N.Ayyasamy and others) and 2013(2) MWN (Civil) 432 (N.Thirumal vs. K.Somasundaram)** and held that those judgments are not applicable to the facts of the present case.

9.As per Section 53 of the Transfer of Property Act, 1882, the transfer of immovable property made by transferor with intent to defeat or delay the creditors shall be voidable at the option of any creditor. A reading of Section 53 of Transfer of Property Act shows that any fraudulent transfer is voidable at the instance of the creditor who has to file a suit and prove that such a transfer is fraudulent transfer. Till a competent Court declares such a transfer is fraudulent transfer and set aside such transfer, the same is valid. Section 53 of the Transfer of Property Act reveals that a creditor includes a decree holder whether he has filed Execution Petition or not. In the present case, the petitioner has not filed any suit to set aside the settlement deed executed by the respondent in favour of his sons.

10.In view of the same, the contention of the counsel for the petitioner that the sons of the respondent are universal donees they are liable to pay all debts of respondent is untenable for the reason that the petitioner has not proved that respondent has donated all his properties. Unless, the petitioner proves the same, he cannot invoke Section 128 of the Transfer of Property Act. In the circumstances, there is no illegality or irregularity warranting interference by this Court. The Judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case.

11.In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Tenkasi.

+ 1 CC TO Mr.V.RAGHAVACHARI, ADVOCATE IN SR No. 8778