

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.2458 of 2017

ORDER:

This revision petition arises out of an order passed by the Executing Court under Order XX1 Rule 64 and Rules 66 and 82 of the Code.

2. Heard Mr. R.N. Hemanand, learned counsel for the petitioner.

3. The fact that the petitioner suffered a money decree and the fact that the decree has now attained finality are not in dispute. It appears that there was one Execution Petition filed earlier, but the same was withdrawn. The second Execution Petition, out of which the present proceedings arise, was filed after two years and hence notice was ordered. The petitioner/judgment debtor filed a counter, raising only one point, viz., that the property sought to be attached and sold, had already been gifted by her to her daughter. But the Executing Court found that the gift deed was executed two years after an order of attachment was passed in respect of the property. Therefore, I do not find any irregularity in the order of the Executing Court.

4. The contention of the petitioner is that a gift receipt was executed at the time of the marriage of her daughter in the year 2009 and that a pacca gift deed was executed and registered on 01.07.2014. Therefore, the counsel contends that the gift was anterior in point of time to the attachment.

5. But the above argument is liable to be rejected outright. No gift of an immoveable property worth over Rs.100/- can be made, except by way of a duly stamped and registered document. The gift receipt allegedly executed on 12.02.2009, is not a gift valid in the eye of law. Admittedly, the attachment was ordered on 11.04.2012 and the gift deed was duly

executed and registered only on 01.07.2014. Therefore, the primary contention of the learned counsel for the petitioner is liable to be rejected.

6. The second contention of the learned counsel for the petitioner is that the Principal Senior Civil Judge, Machilipatnam is holding full additional charge of the post of Senior Civil Judge, Avanigadda and that he comes only once in a week and that without conducting an enquiry, he allowed the Execution Application.

7. I do not find any substance in the above contention. The petitioner was granted an opportunity to file a counter to the execution proceedings. He filed a counter and the same has been taken into account before the impugned order was passed.

8. One last contention raised by the learned counsel for the petitioner is that the petitioner is an illiterate person, who paid a sum of Rs.75,000/- and that only thereafter the first Execution Petition was withdrawn. But the law is well settled that once an execution is filed, any payment of the decree debt should be made only in the manner prescribed under Order XXI. Any payment, even if made out side the Court, and which the petitioner did not take care to have an endorsement made in the Execution Petition, cannot be relied upon. Therefore, the revision is devoid of merits. Hence the Civil Revision Petition is dismissed.

9. As a sequel, miscellaneous petitions, if any, pending in this revision, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

2nd June, 2017
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

C.R.P.No.2458 of 2017



Date: 02-06-2017

Js.