

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P (NPD) No.1540 of 2017

and

C.M.P. No.7141 of 2017

1.Porkalaiselvi
2.Kalaiselvi
3.Minor.Jayapriya
4.Minor.Nivedha

.. Petitioners

Vs

1.R.M.S.Vasantha
2.Arikrishna Gounder
3.Allapitchai
4.Mariammal

.. Respondents

PRAYER: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order and decretal order dated 24.01.2017 made in E.A. No.677 of 2016 in E.P.No.17 of 2014 in O.S. No.22 of 2008 on the file of the Court of the III Additional District Judge, Puducherry.

For Petitioners

:Mr.S.V.Jayaraman,
Senior Counsel
for Mr.T.Dhanasekaran

For Respondent

: Mr.Sai Srijan Tayi for R1

No appearance for R2 to R4

ORDER

This Civil Revision Petition is filed against the order and decretal order dated 24.01.2017 made in E.A. No.677 of 2016 in E.P.No.17 of 2014 in O.S. No.22 of 2008 on the file of the Court of the III Additional District Judge, Puducherry.

2. The 1st respondent has filed the suit in O.S. No.22 of 2008 for specific performance against the respondents 2 to 4 and the petitioners 1 & 2 herein. The same was decreed, directing the respondents to return the advance amount paid along with interest and to pay the cost. Thereafter, the 1st respondent filed E.P. No. 17 of 2014 for recovery of the suit money to the tune of Rs.1.05 crores, failing which the property of the respondents to be attached. In the meanwhile, E.A. No.791 of 2014 was filed by the 5th defendant /2nd petitioner herein, under Section 47 of CPC seeking to declare the decree passed in the suit as null and void. After filing of the counter statement and hearing both sides, the Executing Court dismissed E.A.No.791 of 2014. Subsequently, order of attachment was passed in the petition in E.P. No. 17 of 2014 filed by the 1st respondent. Aggrieved by the said order, the petitioners herein filed E.A. No. 677 of 2016 seeking to set aside the attachment order

dated 12.08.2015. The Executing Court dismissed the aforesaid application. Challenging the same, the present revision petition is filed before this Court.

3. According to the petitioners, a Will was executed on 14.06.2013 by respondents 2 to 4 in favour of the petitioners and registered at Sub Registrar's office, Bahour vide Doc. No. 37 of 2013 of Book III, which was the subject matter before the court below. Therefore, the petitioners have filed an application challenging the attachment order. Without considering the same, the executing court had dismissed the said application by its order dated 12.08.2015. Hence, the order of the court below is liable to be set aside.

4. The learned counsel for the 1st respondent would submit that the petitioners have relied upon the Wills registered in favour of the respondents 2 to 4. The said registered Will has not been acted upon since the respondents 2 to 4 are alive. Prima facie, the petitioners have not satisfied the court as to the said Wills have been acted upon. The other contention of the learned counsel for the 1st respondent is that the petitioners have not filed any settlement deed. The court below only

5. Heard the learned counsel for the petitioners and the 1st respondent. There is no representation for the respondents 2 to 4.

6. On perusal of the facts and circumstances of the case, it is found that subsequent to the judgment and decree passed by the court below in O.S. NO. 22 of 2008 on 13.03.2013, the Will has been executed by the respondents 2 to 4/ defendants 1 to 3 in favour of the petitioners/ defendants 4 & 5 and their grand daughters and the same was registered on 14.06.2013. Therefore, it is clear that the documents have been created by the respondents 2 to 4, conspiring with the family members, in favour of the claimants.

7. As per the decision of this Court in ***M/s. Arya Engineering Vs. Corporation Bank and 3 others, reported in (1997) 2 CTC 83***, the relevant paragraph 5 reads as follows:-

" 5. **Section 53** of the Transfer of Property Act provides that every transfer of immovable property made with intend to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated and delayed, though a transferee in good faith and for

consideration and has acquired the property, his claim is protected. It also provide that a suit instituted by a creditor to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of or for the benefit of all the creditors. The facts and circumstances of the case as found disclosed that the appellant transferee was not one, who has acquired the property in good faith and for consideration. The learned counsel contended that the finding recorded has the effect of nullifying the sale in favour of the appellant. We cannot agree with the said claim. It is well settled that the factum of finding recorded on the nature of the transaction that a particular sale transaction or a transfer is hit by [Section 53](#) of the Transfer of Property Act has the resultant effect that the property was transferred in order to avoid the debt in question of the creditor and it has no automatic effect of nullifying the transaction and that too in a claim petition alone, which came to be dismissed. The effect is the purchaser cannot avoid the debt in question by virtue of his purchase and it would be open to the creditor to get at the properties in accordance with law. The plea that there is no averment by the creditor that there are no other properties than the one under attachment and that there was no allegation that the transfer is a fraudulent one cannot meet with our

approval or acceptance. This is a property, which is specifically hypothecated to the Bank and a person, who has recklessly purchased such a property without proper verification of the proceedings for the settlement of the claim of the Bank during the pendency of the proceedings for recovery of the debt having his eyes wide open and full knowledge of the debt and the proceedings, cannot project such a claim. Consequently, we see no merit whatsoever in the challenge made against the order of the learned single Judge. The learned Subordinate Judge as also the learned single Judge has given cogent and convincing reasons based on sufficient and acceptable materials to reject the claim petition made by the appellant and we are not persuaded to take any different view that the one arrived at by the learned single Judge. "

In the aforesaid judgement, the Division Bench of this Court has held that the 2nd defendant in whose favour the decree was passed cannot be said to be a transferee. The said judgement will also be applicable to the facts of this case, since the respondents 2 to 4 are the debtors and the the Will has been executed in favour of their daughters and grand daughters, to defeat the interest of the creditors. Since the said transaction would affect the creditors, the court below had dismissed

the application. Further, the petitioners rely on the registered Will executed by the respondents 2 to 4. No material has been shown that the registered Will has not been acted upon before the judgement and decree was passed. There is no force in the contention of the petitioners, relying upon the registered Will in favour of the petitioners. Hence, this Court does not warrant to interfere with the order.

8. In the aforesaid circumstances and relying on the decision cited supra, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No Costs.

06.03.2018

Speaking / Non Speaking order

Index :Yes/No

[Issue order copy on 24.04.2018]

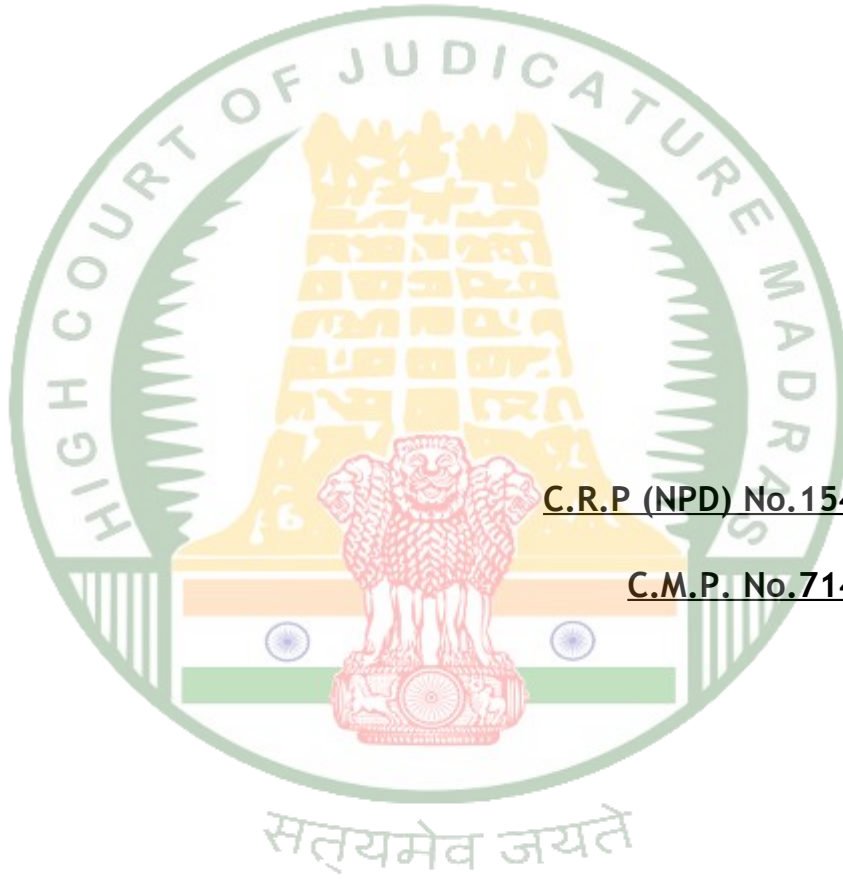
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To

The III Additional District Judge,
Puducherry.

D. KRISHNAKUMAR J.,

avr



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