

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 13.04.2018****Coram: The Honourable Mr. Justice N. SESHASAYEE****C.R.P(NPD)No.1429 of 2011**

C.Saravanan

...Petitioner

Versus

Jayaraman

...Respondent

This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decreetal order of the learned Principal Revision Petition against the Fair and Decreetal order of the learned Principal Subordinate Judge of Krishnagiri, dated 08.10.2010 in R.E.P.No.65 of 2009 in O.S.No.119 of 2004.

For Petitioner

:

Mr.J.Hariharan

For Respondent

:

Mr.P.Mani

ORDER

1.1. The revision petitioner had instituted the suit in O.S.No.119 of 2004 on the file of the learned Principal Subordinate Judge, Krishnagiri for recovery of Rs.1,31,300/- along with future interest on the principal ground. On 31.03.2008, the suit was decreed. Thereafter, the revision petitioner had filed an Execution Petition in R.E.P.No.65 of 2009 on 27.04.2009 for attachment of a property of the judgment debtor.

1.2. In the counter affidavit, judgment debtor has disclosed that the property has been settled in favour of his son on 20.03.2008. This was

some ten days prior to the passing of the decree by the Trial Court.

1.3. The Execution Court has dismissed the Execution Petition on the sole ground that since the property is not in the name of the judgment debtor on the date when the Execution Petition is laid, the judgment debtor has no disposable interest over the property for the Court to attach.

2. The learned counsel for the petitioner submits that the said transfer by the judgment debtor in favour of his son is a transfer without any consideration and it is also intended to defeat the interest of the creditors and this transfer therefore falls within the ambit of fraudulent transfer within the meaning of Section 51 of the Transfer of Property Act. In fitness of things, argued the learned counsel, Execution Court ought to have enquired the matter and entered a finding whether the settlement deed which the judgment debtor executed in favour of his son amounted to a fraudulent transfer before taking a final decision in the Execution Petition. The learned counsel relied on the judgments of the Supreme Court in ***Hamda Ammal vs Avadiappa Pathar And 3 Others*** [(1991) 1 SCC 715: (1991) 1 MLJ 52 : (1991) 2 LW 110] and the judgment of the Division Bench of this Court in ***M/s.Arya Engineering Vs. Corporation Bank and 3 others*** [1997 (II) CTC 83], ***S.Ravikumar Vs. R.M.Manivasagam***, [2010 (5) CTC 580], ***Shanmugam and 2 others Vs. M/s. Syndicate Bank*** [1999 (III) CTC 186] to support his contention.

3. The learned counsel for the respondent submitted that it is gatherable from the order that the Execution Court had impliedly considered this

issue before dismissing the issue.

4. On a plain reading of the impugned order of the Execution Court dated 08.10.2010, there is nothing to indicate that the said Court had enquired into the matter to ascertain if the settlement deed which the judgment debtor had executed in favour of his son constituted a fraudulent transfer.

5. This Court finds merit in the submissions of the petitioner's counsel and accordingly, the petition is allowed and the impugned order dated 08.10.2010, is set aside and the matter is remanded back to the Execution Court. The Execution Court is directed to hold an enquiry and enter a finding whether the said settlement deed now referred to above is fraudulently made with the intent to defeat the interest of the creditor. The Execution Court is further directed to dispose of the petition as expeditiously as possible and the Court shall be parsimonious in granting undeserving adjournments to the parties. No costs.

सत्यमेव जयते

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Index : Yes / No

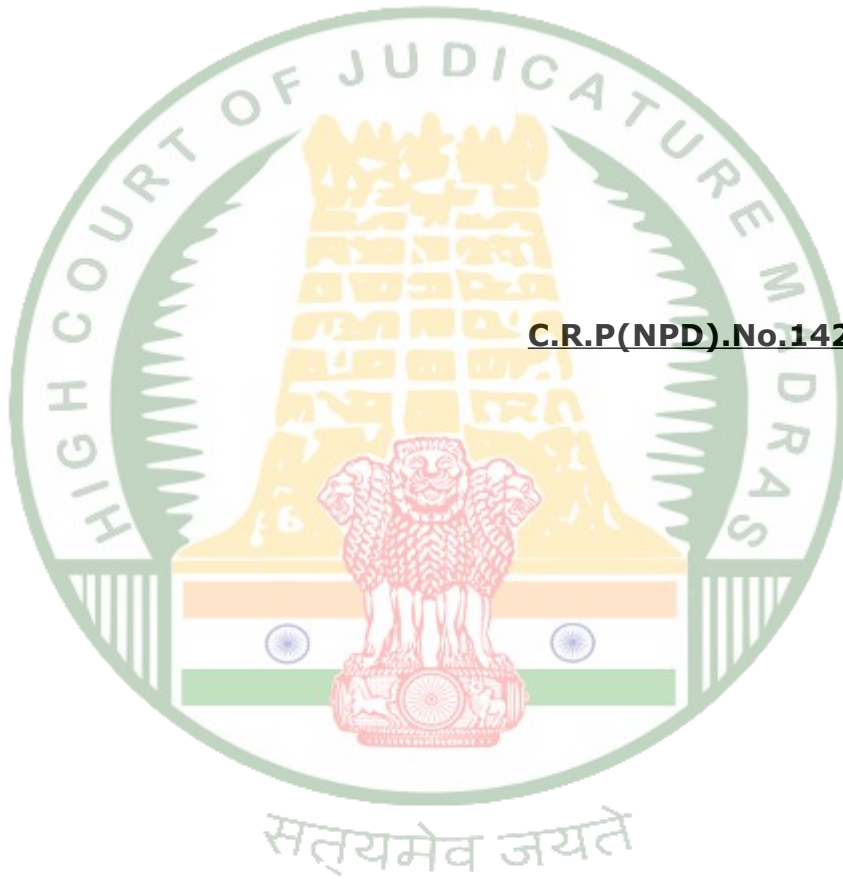
To

The Principal Subordinate Judge,
Krishnagiri.

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N. SESHASAYEE, J.,

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