

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.868 of 2014

S.Rajagopal

.. Petitioner

Vs.

1.Sastha Kiruba

2.Nagamani @ Nagarathinam

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to set aside the fair and decretal order dated 07.01.2013 made in R.E.A.No.198 of 2009 in R.E.P.No.142 of 2008 in O.S.No.57 of 2004 on the file of the I Additional Subordinate Court, Salem.

For Petitioner : Mr.R.Jagadeesan

For R1 : Mr.A.P.Srinivas

For R2 : Mr.J.Ramakrishnan

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 07.01.2013 made in R.E.A.No.198 of 2009 in R.E.P.No.142 of 2008 in O.S.No.57 of 2004 on the file of the I Additional Subordinate Court, Salem.

2.The petitioner is plaintiff, first respondent is the third party and second respondent is the defendant in O.S.No.57 of 2004 on the file of the I Additional Subordinate Court, Salem. The petitioner filed the said suit against the second respondent for recovery of a sum of Rs.1,52,650/- with subsequent interest at the rate of 18% per annum from the date of the suit, till realisation. The said suit was dismissed by the judgment and decree dated 12.09.2007. Against the said judgment and decree, the petitioner filed A.S.No.1 of 2008 on the file of the Principal District Judge, Salem. The first Appeal was allowed by the judgment and decree dated 09.06.2008. The petitioner filed E.P.No.142 of 2008 to execute the decree obtained by him and to recover the decretal amount from the second respondent by attachment and sale of the property mentioned therein.

3.The first respondent filed E.A.No.198 of 2009 under Section 47 of C.P.C, claiming absolute title for the property and contended that the petitioner is not entitled for attachment and sale of the property. According to the first respondent, the property belonged to his father V.K.Shanmuga Sundaram, who died on 29.05.2007. On

his death, the respondents 1 and 2 and daughter of the second respondent inherited 1/3 share each. The second respondent and her daughter by Release Deed dated 22.08.2007, relinquished their 2/3 share in favour of the first respondent. The first respondent has become owner of the property. The first respondent got his name mutated in revenue records showing himself as owner of the property. The first respondent is in possession and enjoyment of the property as owner.

4.The petitioner filed counter affidavit and contended that alleged Release Deed is fraudulent one and it is not binding on him. The Release Deed was executed on 22.08.2007 pending suit with a view to prevent the petitioner in realising the decretal amount and therefore, it is void as per the Section 53 of the Transfer of Property Act.

5.Before the learned Judge, the first respondent was examined as P.W1 and marked one document, Ex.P1, the release deed. The petitioner examined himself as R.W.1 and he did not mark any documents.

6.The learned Judge considering the averments in the affidavit, counter affidavit and Ex.P1, allowed the application, holding that the petitioner has not produced any document to substantiate that Release Deed is fraudulent one.

7.Against the said order dated 07.01.2013 made in R.E.A.No.198 of 2009 in R.E.P.No.142 of 2008 in O.S.No.57 of 2004, the petitioner has come out with the present Civil Revision Petition.

8.The learned counsel for the petitioner contended that the learned Judge failed to see that Release Deed executed by the second respondent and her daughter in favour of the first respondent, pending suit and said document is void as the same is hit by Section 53 of Transfer of Property Act. The learned Judge has not given any reason for allowing the application. The second respondent and her daughter executed the Release Deed only to prevent the petitioner from getting the decretal amount. In view of the fraudulent transaction, the petitioner is entitled to proceed against the petitioner for realisation of the decretal amount due by the second respondent.

9.The learned counsel appearing for the first respondent contended that the second respondent had only 1/3 share in the property sought to be allotted. The second respondent and her daughter released 2/3 share in favour of the first respondent by executing a Release Deed dated 22.08.2007. The first respondent is absolute owner of the property. The said Release Deed is not a forged or fraudulent one and prayed for dismissal of the Civil Revision Petition.

10.Heard the learned counsel for the petitioner as well as the first respondent and second respondent and perused the materials available on record.

11.The petitioner filed suit against the second respondent for recovery of money. Originally the suit was dismissed on 12.09.2007. The petitioner filed A.S.No.1 of 2008, challenging the said judgment and decree. Pending appeal, the second respondent and her daughter executed Release Deed releasing their 2/3 in favour of the first respondent. The contention of the learned counsel for the petitioner is that the said Release Deed is fraudulent transaction to

prevent the petitioner from recovering the decretal amount from the second respondent. The said contention is without merits. The suit is for recovery of money filed against the second respondent. The petition property was not subject matter of the suit. In view of the same, the release deed is not void or fraudulent one. The petitioner has not disputed the contention of the first respondent that property belonged to the father of the first respondent and husband of the second respondent and on his death, the second respondent as wife, the first respondent and his sister as children inherited 1/3 share each in the petition property. Even before the suit was decreed, the second respondent and her daughter released their 1/3 share in favour of the first respondent. The petitioner pending suit or appeal had not obtained any order of attachment before judgment. It is not correct to state that the learned Judge allowed the application without giving any reason.

12. The learned Judge considering the Release Deed, averments in the affidavit, counter affidavit and evidence of first respondent and petitioner, allowed the application by giving cogent and valid reason. There is no infirmity or irregularity warranting interference by this Court with the order of the learned Judge dated

07.01.2013 made in R.E.A.No.198 of 2009 in R.E.P.No.142 of 2008
in O.S.No.57 of 2004.

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

Index :: Yes/No
gsa

To

The I Additional Subordinate Judge,
Salem.

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V.M.VELUMANI,J.

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