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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.07.2018
PRONOUNCED ON : 20.11.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD).No.909 of 2017
and
C.M.P. (MD).No.9651 of 2017

T.Jannathul Azma

... Appellant/
Claim Petitioner/3rd party/3rd party

Vs.

1.J.Rahmathunnisha
2.J.Rilwana Parween

... Respondents 1 & 2/
Respondents 1 & 2 /Petitioner
Plaintiffs/Decree holders

3.M.Jahangir Batcha

... 3rd respondent/3rd respondent/
Respondent/Defendant/Judgment debtor

(Minor 2nd respondent declared as major and the guardianship discharged, vide Court order dated 13.02.2018 made in CMP.(MD). No.1433 of 2018 in C.M.A.(MD).No.909 of 2017)

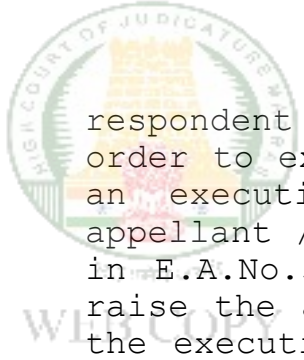
PRAYER:- Appeal filed under Order 21 Rule 58(4) of C.P.C., against the order, dated 22.09.2017, made in E.A.No.32 of 2014 in E.P.No.45 of 2015 in O.S.No.184 of 2010 on the file of the II-Additional District Judge and Sessions Judge, Thanjavur.

For appellant : Mr.V.Santharaman
For respondents 1 & 2 : Mr.N.Tamil Mani

JUDGMENT

This appeal has been filed by the appellant / 3rd party against the order dated 22.09.2017 passed by the II-Additional District and Sessions Judge, Thanjavur in E.A.No.32 of 2014 in E.P.No.45 of 2015 in O.S.No.184 of 2010, whereby and whereunder the claim made by the appellant to raise the attachment of the properties in item Nos.1, 13 and 14 of the execution petition was rejected.

2. The respondents 1 and 2 herein, who are wife and daughter respectively of the 3rd respondent herein, have filed the suit in O.S.No.184 of 2010 against the 3rd respondent herein for maintenance. By judgment and decree dated 12.12.2012, the suit was allowed and the maintenance amount was fixed at Rs.15,000/- p.m. and the 3rd



respondent was directed to pay the arrears of Rs.7,20,000/-. In order to execute the decree, the first and second respondents filed an execution petition. During the pendency of the same, the appellant / 3rd party to the suit has filed an execution application in E.A.No.32 of 2014 under Order 21 Rule 58 of C.P.C. seeking to raise the attachment of the properties in item Nos.1, 13 and 14 in the execution petition on the ground that the third respondent has already settled those properties in her favour by way of settlement deeds dated 27.08.2007 and 24.03.2010 and that though the third respondent had unilaterally cancelled the settlement deed dated 27.08.2007, it was declared as invalid by the Court below, pursuant to the suit filed by the appellant in O.S.233 of 2011 in *ex parte*.

3. The third respondent herein remained *exparte* before the trial Court. After hearing the learned counsel for the appellant and the learned counsel appearing for the respondents 1 and 2, the Court below negatived the claim of the appellant holding that the *ex parte* decree in O.S.No.233 of 2011 was subsequently set aside at the instance of the third respondent herein and as the right of the appellant with regard to the properties in item Nos.1 and 13 is under dispute, the appellant has no right to maintain the execution application and that the appellant has wilfully filed the execution application in order to defeat the rights of the respondents 1 and 2. Challenging the said order, the appellant is before this Court.

4. The learned counsel appearing for the appellant / third party would submit that during the pendency of this appeal ie., on 27.02.2018, the suit in O.S.No.233 of 2011 was decreed in favour of the appellant and thereby the right and title of the appellant with regard to item Nos.1 and 13 is upheld. He would further submit that the settlement deeds were executed by the third respondent even before the initiation of the suit in O.S.No.184 of 2010 and therefore, it cannot be stated that the settlement deeds were executed in order to defeat the rights of the respondents 1 and 2 and thus, he prayed to allow this appeal.

5. The learned counsel appearing for the respondents 1 and 2 would submit that the third respondent, who executed the settlement deed dated 27.08.2007 has admitted in the written statement filed in O.S.No.233 of 2011 that the said settlement deed was executed in favour of the appellant on compulsion and in order to defeat the claim of the respondents 1 and 2, and that another settlement deed dated 24.03.2010 has been executed after filing of the suit in O.S.No.184 of 2010 and therefore, the said settlement deeds are void documents under Section 53 of the Transfer of Property Act. Hence, the order passed by the Court below need not be interfered with. Thus, he prayed to dismiss the appeal.

6. Heard the learned counsel appearing for both sides and perused the records carefully.

<https://hcservices.ecourts.gov.in/hcservices/>

7. Before going into the issue involved in this appeal, this



Court is inclined to refer to Sections 52 and 53 of the Transfer of Property Act, which reads as follows:

"52. Transfer of property pending suit relating thereto.- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation.-- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

53. Fraudulent transfer.- (1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Nothing in this sub- section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub- section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree- holder whether he has or has not applied for execution of his decree) 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.

(2) Every transfer of immoveable property made without consideration with intent to defraud a transferee shall be voidable at the option of such transferee.



For the purposes of this sub- section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

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8. A bare reading of the abovesaid provisions makes it abundantly clear that if any property against which suit is filed, should not be alienated or transferred during the pendency of the suit. If any such property is transferred or otherwise dealt with by any other party to the suit so as to affect the rights of any other party thereto under any decree or order which may be made therein, the same shall be hit by the doctrine of *lis pendens* namely, such transaction shall be held as void.

9. In the light of the above said provisions, it is to be seen whether the transaction was effected by the third respondent / judgment-debtor with an intention to defraud the respondents 1 and 2 and whether it was supported by consideration and done with good faith.

10. In this case, according to the appellant, she derived title to the properties in item Nos.1 & 13 and 14 through the settlement deeds dated 27.08.2007 and 24.03.2010 respectively, executed by the third respondent herein and she already settled the property in item No.13 in favour of her father by a settlement deed dated 05.09.2013. According to the respondents 1 and 2 herein, the said settlement deeds were executed by the third respondent in order to defeat their claim in the suit in O.S.No.184 of 2010 and therefore, under Section 53 of the Transfer of property Act, they are only void documents.

11. It is seen that the third respondent, who executed the settlement deed, dated 27.08.2007, has cancelled the said deed by way of a revocation deed dated 30.06.2011. As against the said cancellation, the appellant has filed the suit in O.S.No.233 of 2011. Initially, it was decreed in *ex parte* and subsequently, it was set aside and contested. The third respondent has stated in the written statement filed in O.S.No.233 of 2011 that the settlement deed dated 27.08.2007 has been executed under coercion and in order to defeat the claim of the respondents 1 and 2 herein and that her sister also has a share in the property. But, the Court below has allowed the suit in O.S.No.233 of 2011 and declared the cancellation deed as void document. While allowing the said suit, the Court below has held in paragraph No.15 as follows:

"15) DW1 takes a contention that the suit mentioned property is not a absolute property and his sister also has a share and therefore, the deed received by this plaintiff is totally wrong. On perusal of Ex.A1, it reads that the total property belongs to the 1st defendant - Jahanghir

Subsequent to the execution of the settlement there has been two sale deeds executed. One is, in the year of 2009 and one is in the year



of 2010. In both the documents, his sister is also a party as a vendor. Till date his sister has not questioned about the settlement deed claiming her share. This 1st defendant after 6 years again now put forth a claim that the suit mentioned property also belongs to his sister. When an allegation of fraud is being thrown on the plaintiff the nature, manner of fraud need to be established. Even in the cancellation deed, there is no whisper that he executed the settlement deed only due to the fraud and coercion. Further the position of law is well settled and the defendant when seeking cancellation of a settlement deed on the ground of fraud, coercion she need to approach proper civil Court."

12. From the above, it is clear that though the third respondent himself has stated in the suit in O.S.No.233 of 2011 that the settlement deed, dated 27.08.2007, has been executed under coercion or in order to defeat the right of the respondents 1 and 2 in the suit in O.S.No.184 of 2010, it has not been proved so by the third respondent. Further, it is seen that the cause of action for filing the suit in O.S.No.184 of 2010 had arisen only from 30.08.2008. As the settlement deed dated 27.08.2007, was executed by the third respondent in respect of item Nos.1 and 13, long before the initiation of the cause of action, this Court is of the view that Section 53 of the Transfer of Property Act cannot be attributed to the settlement deed dated 27.08.2007. Therefore, this Court is of the view that the attachment can be raised in respect of the properties in item Nos.1 and 13.

13. So far as the settlement deed, dated 24.03.2010, executed by the third respondent in respect of the property in item No.14 is concerned, admittedly, it has been executed by the third respondent during the pendency of the suit in O.S.No.184 of 2010 without any sale consideration in favour of the appellant herein. Hence, this Court is not inclined to raise the attachment in respect of the property in item No.14 in the execution petition.

14. In the result, this civil miscellaneous appeal is partly allowed and the order passed by the Court below in E.A.No.32 of 2014 is set aside in respect of the property in item Nos.1 and 13 alone and the said properties are directed to be raised from the attachment. In other respect, the order passed in E.A.No.32 of 2014 is confirmed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/



To

1. The II Additional District and Sessions Judge,
Thanjavur.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.N.TAMIL MANI, ADVOCATE IN SR No. 96152
+ 1 CC TO Mr.T.R.SUBRAMANIAN, ADVOCATE IN SR No. 95957

GCG

TE/SV/SAR-3 : 20/12/2018 : 6P/6C

judgment in
C.M.A(MD) .No.909 of 2017
20.11.2018