



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2018

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (MD) No.2636 of 2017 (NPD)

and

C.M.P (MD) No.12119 of 2017

L.Noel Raj ...Petitioner/Petitioner/Respondent/Defendant

Vs.

Suresh ...Respondent/Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to pass an order setting aside the fair and decreetal order dated 02.03.2017 passed in E.A.No.82 of 2012 in E.P.No.100 of 2007 in O.S.No.123 of 1999 on the file of Sub Court, Kuzhithurai.

For Petitioner : Mr.A.Robinson

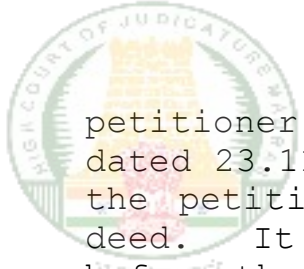
For Respondent : Mr.G.Ramanathan

ORDER

This Civil Revision Petition has been filed challenging the order dated 02.03.2017 made in E.A.No.82 of 2012 in E.P.No.100 of 2007 in O.S.No.123 of 1999 on the file of Sub Court, Kuzhithurai.

2. The case of the petitioner is that during the pendency of the main suit as well as the execution petition, the petitioner and the respondent entered into a compromise and the respondent having received money in terms of compromise, failed to not press the execution petition and hence prayed for dismissal of the execution petition. It is further submitted that the said compromise deed was marked as Ex.P1 and the same was proved through PWs 1 and 2. It is also submitted that E.P schedule property was sold in a public auction by the State Bank of Travancore and third party has purchased the suit property and the respondent has lost his right to execute the sale deed through the court as per the decree.

3. On the other hand, the respondent would submit that the petitioner had fraudulently created the compromise deeds and the respondent never entered into any compromise with the



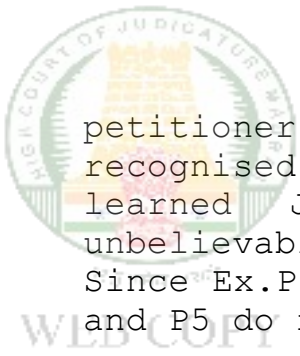
petitioner. According to the respondent, the compromise deed dated 23.11.2003 was rejected by this Court in Second Appeal. So, the petitioner could not press into service the said compromise deed. It is further submitted that when the matter is pending before the Execution Court, no person will enter into a compromise deed and the petitioner having lost his case before the District Court as well as the High Court in a second appeal only to drag on the proceedings has filed the present application.

4. The respondent would further submit that if really the compromise arrived at between the parties, the same would have been recorded through the court. With regard to DRT proceedings, the respondent would state that the alleged mortgage created by the petitioner with respect to the schedule property is hit by lis pendens and therefore, the mortgage as well as the subsequent sale will not affect the respondent and the same will not stand in the way of the respondent in getting the sale deed executed through the court.

5. The Court below, by an order dated 02.03.2017, dismissed the petition. Aggrieved by the said order, the petitioner herein has preferred the above Civil Revision Petition.

6. Heard the learned Counsel for the petitioner and the respondent and perused the materials available on record.

7. Perusal of the record shows that the petitioner is the respondent in the main E.P and the defendant in the original suit which was filed for specific performance by the respondent herein and the same was decreed in his favour, against which, the petitioner filed appeal in A.S.No.29 of 2007 which was dismissed, against which the petitioner filed second appeal and the same was also dismissed by this Court and the judgment in second appeal has been marked as Ex.R2. In the second appeal, the compromise deed dated 23.11.2003 was considered and it was not accepted by the court and therefore, the petitioner could not rely on the alleged compromise deed dated 23.11.2003. With regard to the second compromise deed, the respondent categorically denied the execution of Ex.P1 and it is seen from the records that the petitioner has examined PW2 who claims to be the close associate of the petitioner and both of them as office bearers of Bee Keepers Welfare Association obtained loan from the State Bank of Travancore and failed to repay the same which can be evident from Ex.P7 which is the copy of the order in the original application filed before the DRT, Madurai, by the State Bank of Travancore, Marthandam Branch. It clearly shows that PW2 is associated with the petitioner. Further, the petitioner has been defending the original suit from the year 1999 and he also lost the original service, court e-gov.in services and second appeals and this petitioner has been continuously prosecuting the EP from 2007. The respondent is proceeding with the case for more than a decade and if at all the



petitioner had entered into any compromise, it would have been recognised through court and therefore, as rightly found by the learned Judge, the compromise effected on 03.01.2011 is unbelievable and therefore, the learned Judge did not accept PW2. Since Ex.P1 was not proved, the learned Judge held that Exs.P3, P4 and P5 do not hold good.

8. The petitioner had also relied on Ex.P11 claiming to be the genuine compromise entered into between the petitioner and respondent. On perusal of Ex.P11, it is found that it is a power of attorney deed executed by one D.Abraham in favour of the petitioner. The said deed discloses that the same was prepared by the respondent as per the instructions of the said Abraham. Stamp papers were purchased in the name of Abraham. Though this petitioner's name is shown as agent in the said deed, the deed shows that he had not participated in the preparation of Ex.P11 which is dated 20.10.2004. Only after Ex.P11, the original suit was decreed and first and second appeals judgments were pronounced.

9. It is also seen that the suit property has been sold by State Bank of Travancore in a public auction and was purchased by third party following Ex.P7-Debt Recovery Tribunal proceedings from which, it is evident that the petitioner mortgaged the suit property with the State Bank of Travancore, Marthandam Branch on 16.04.2003. The said suit is of the year 1999 and the sale agreement is also prior to that. Pending original suit, the petitioner created this mortgage which is hit by lis pendens and therefore, the order passed by the DRT and the auction sale will not bind this respondent. The respondent is always at liberty to challenge these proceedings in appropriate forum. Though Ex.P9 shows that the steps taken by this respondent before the Debts Recovery Tribunal to get rid of encumbrance created by the petitioner ended in vain, it is for the respondent to challenge the same before the appropriate forum. The DRT proceedings in no way can obstruct the execution proceedings. The argument put forth by the petitioner that the property has already been sold out on auction by the State Bank of Travancore, Marthandam Branch, cannot be accepted. The learned Judge has rightly dismissed the application. There is no infirmity in the order passed by the learned Judge. Accordingly, this Civil Revision Petition is liable to be dismissed.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)



To

The Sub Judge,
Sub Court, Kuzhithurai.

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+1cc to Mr.G.Ramanathan, Advocate Sr.No.44863

RM

VB/JC/SAR3/12.04.2018/4P/3C

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