



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.R.P. (NPD) (MD) .No.1666 of 2016

and

CMP(MD) No.8137 of 2016

T.Ponnarasu

... Petitioner/Petitioner/Plaintiff

Vs.

M.Rajesh Panneerkumar

... Respondent/Respondent/Defendant

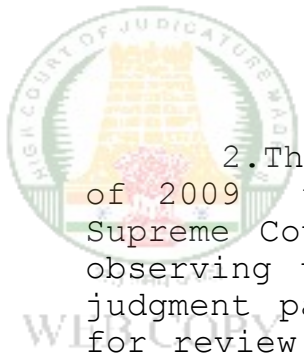
PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 11.02.2016 made in E.P.No.32 of 2011 in O.S.No.42 of 2006 on the file of the third Additional District Judge, Tirunelveli and allow the Civil Revision Petition with cost.

For petitioner : Mrs.N.Krishnaveni,
Senior Counsel
for Mr.P.Thiagarajan

For Respondent : Mr.A.Arumugam
for M/s.S.Mani

ORDER

The revision petitioner filed O.S.No.42 of 2006 on the file of the learned third Additional District Judge, Tirunelveli, for directing the defendant, to execute a cancellation deed, cancelling the sale deed dated 15.05.2006. The suit was decreed as prayed for by judgment and decree dated 15.07.2009. Questioning the same, the respondent herein filed A.S.No.261 of 2009 before the Madurai Bench of Madras High Court. The learned Appellate Judge took note of the sequence of events. The plaintiff had entered into a mortgage deed transaction with the family of the defendants. Eventhough, the plaintiff claims that what was executed by her on 15.05.2006 was only a mortgage and not as a sale deed, it has been admitted by the plaintiff that the defendant has paid a sum of Rs.95,000/- and only thereafter obtained the signature of the plaintiff. In view of this submission made by the plaintiff, the decree passed by the trial Court was modified and a direction was given to the defendant to execute the cancellation deed, cancelling the sale deed dated 15.05.2006 upon repayment of sum of Rs.95,000/- by the plaintiff. It was submitted before the Appellate Court that the said sum had already been deposited by the plaintiff. There upon the defendant was given liberty to withdraw the said amount, on execution of the

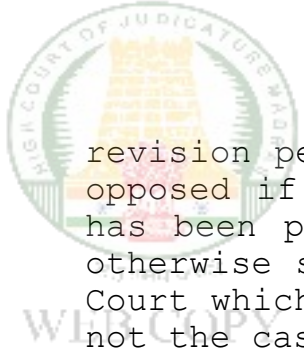


2.The judgment and decree dated 23.02.2010 made in A.S.No.261 of 2009 was questioned in S.L.P.No.15428 of 2010. The Hon'ble Supreme Court by order dated 04.01.2011, dismissed the S.L.P., by observing that they did not find any reason to interfere with the judgment passed by the High Court. The respondent herein applied for review of the said order dated 04.01.2011. But the review was also dismissed. The Hon'ble Supreme Court observed that they have gone through the review petition and the connected papers. Since, the decree made in favour of the revision petitioner attained finality, right upto Hon'ble Supreme Court, E.P.No.32 of 2011 was filed before the III Additional District Judge, Tirunelveli. The execution of the decree was opposed by the respondent herein by filing a counter. The respondent took the stand that on 18.02.2011, the plaintiff / decree holder had executed a sale deed, conveying the property in question in favour of his wife Jemi. Both the parties entered into the witness box and marked the documents. The Executing Court by order dated 11.02.2016 held that in view of the execution of the sale deed dated 18.02.2011, the decree holder has no right whatsoever over the suit property and therefore the execution petition is liable to be dismissed. This order is challenged in this Civil Revision Petition.

3.Heard the learned Senior Counsel appearing for the revision petitioner and the learned counsel appearing for the respondent.

4.The learned counsel appearing for the respondent pointed out that the order impugned in this Civil Revision Petition is to be sustained for more reasons than one. His first contention is that the revision petitioner has not chosen to challenge the sale deed executed by him in favour of the wife of the respondent on 18.02.2011. His second contention is that on the date of filing of the E.P., the revision petitioner has no subsisting interest whatsoever, in respect of the suit property and that therefore the Court below rightly dismissed the E.P., as not maintainable. He placed reliance on the decision of the Hon'ble Supreme Court reported in 1955 1 SCR 1369 in Jugalkishore Saraf Vs. Raw Cotton Co. Ltd., in this regard. He contended that CPC is only a procedural law and therefore when the occasion demands it must yield to the substantive law enshrined in the Transfer of Property Act. He finally contended that the decree holder had approached the Executing Court with unclean hands. She had deliberately suppressed the factum of execution of sale deed dated 18.02.2011. A person approaching the Court must be non-suited at the very threshold, as held in the decision, reported in 1994 (1) SCC 1 in S.P.Chengalvaraya Naidu (dead) By LRs Vs Jagannath (Dead) By LRs and another.

5.I am unable to agree with any of the contentions raised by the learned counsel for the respondent. The fact remains that the revision petitioner is having a decree in his favour. It was confirmed right up to the Hon'ble Supreme Court. Therefore, the



revision petitioner has every right to execute the same. It can be opposed if it is established that the decree is inexecutable or it has been passed by a Court without jurisdiction or if it has been otherwise satisfied. It is not the case of the respondent that the Court which passed a decree was one without jurisdiction. It is also not the case of the respondent that the decree is inexecutable.

6. On the other hand, the essence of the opposition is that the matter has been otherwise adjusted. If that be so, it can be done only in the manner set out in Order 21 Rule 2 of CPC. In this regard, the learned Senior Counsel appearing for the revision petitioner drew the attention of this Court to the decision reported in 2006 12 SCC 138 in Padma Ben Banushali and another Vs. Yogendra Rathore and others.

Quoting an earlier ruling it was held as follows.

"20. The words 'or the decree of any kind is otherwise adjusted' are of wide amplitude. It is open to the parties, namely, the decree-holder and the judgment-debtor to enter into a contract or compromise in regard to their rights and obligations under the decree. If such contract or compromise amounts to an adjustment of the decree, it has to be recorded by the Court under Rule 2 of Order 21. It may be pointed out that an agreement, contract or compromise which has the effect of extinguishing the decree in whole or in part on account of decree being satisfied to that extent will amount to an adjustment of the decree within the meaning of this rule and the Court, if approached, will issue the certificate of adjustment. An uncertified payment of money or adjustment which is not recorded by the Court under Order 21 Rule 2 cannot be recognised by the executing Court. In a situation like this, the only enquiry that the executing Court can do is to find out whether the plea taken on its face value, amounts to adjustment or satisfaction of decree, wholly or in part, and whether such adjustment or satisfaction had the effect of extinguishing the decree to that extent. If the executing Court comes to the conclusion that the decree was adjusted wholly or in part but the compromise or adjustment or satisfaction was not recorded and/or certified by the Court, the executing Court would not recognise them and will proceed to execute the decree."

7. In this case, the decree holder admittedly did not issue any certificate as contemplated in Order 21 Rule 2(1) CPC. Nor the Judgment debtor applied to the Court in terms of Sub Rule 2 of Rule 2 of Order 21 of CPC. Therefore, the aforesaid decision stated by the learned Senior Counsel for the petitioner clearly governs this case.



8. Now I have to deal with the contentions raised by the learned counsel for the respondent. The core submission of the learned counsel for the respondent is that in view of the execution of the sale deed dated 18.02.2011, by the revision petitioner in favour of the wife of the respondent, the present execution petition is clearly not maintainable. This point has been amplified in three submissions.

9. On one short ground that this contention is liable to be rejected. Admittedly, S.L.P.No.15428 of 2010, questioning the judgment and decree in A.S.No.261 of 2009 was dismissed on 04.01.2011. This Court cannot lose its sight on the fact that the revision petitioner had entered appearance in the S.L.P., and only upon hearing the counsel, the S.L.P., was dismissed. The sale deed in question is said to have been executed on 18.02.2011. The grievance of the revision petitioner is that the sale deed was obtained under coercive circumstances. In fact, the revision petitioner had lodged a complaint in this regard on 04.09.2011 before the Judicial Magistrate, Nanguneri. The review petition before the Hon'ble Supreme Court had come up for hearing only on 25.01.2012. The Hon'ble Supreme Court while dismissing the review petition observed as follows:

"We have gone through the Review Petition and the connected papers. We do not find any merit in the same. Accordingly, the Review Petition is dismissed."

10. The main ground on which, the Judgement debtor is opposing the E.P., took place before the dismissal of the review petition C.No.4663 of 2011. But, the Hon'ble Supreme Court has specifically observed that it dismissed the review petition after going through the connected papers. The respondent herein definitely had an opportunity to project this ground before the Hon'ble Supreme Court.

11. This Court can presume that he would have done so. The review was probably predicated on this aspect of the matter. What the respondent could not achieve before the Hon'ble Supreme Court, cannot be achieved in execution proceedings.

12. As rightly contended by the learned Senior Counsel for the revision petitioner, the wife of the respondent herein did not seek to implead herself in the execution proceedings. All that the revision petitioner seeks is that the judgment debtor must act in terms of the decree passed against him. The respondent has been directed to execute a cancellation deed, cancelling the sale deed dated 15.05.2006. The only way the respondent can get over this is by, by pleading adjustment of the decree.

13. As already pointed out, the procedure set out in Order 21 Rule 2 of CPC has not been complied with. Therefore, the respondent has got no other option but to comply with the decree passed against him. In this view of the matter, the order impugned in this Civil Revision Petition is set aside. The matter is



remitted to the file of the Court so as to proceed further in the manner known to law. This order will not impair or affect or infringe the rights of Jemi, the wife of the respondent, if any.

14. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

The III Additional District Judge,
Tirunelveli.

+1cc to Mr.S.Mani Advocate in sr.no.81816.

Pnn

DS/RP/SAR-4 :14.09.2018: 5P/3C

ORDER MADE IN
C.R.P. (NPD) (MD) .No.1666 of 2016