HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1683 of 2018

ORDER:

1) Assailing the order dated 26.02.2018 passed in E.A.No.921 of 2011 in E.P.No.84 of 2010 in O.S.No.225 of 1994 by the Principal Senior Civil Judge, Rajamahendravaram, wherein the petition filed by the petitioners under Section 47 of the Code of Civil Procedure (for short "the CPC"), to declare the judgment and decree in O.S.No.225 of 1994 as nullity and in-executable in respect of 220 sq. yards of the property covered under the two gift deeds dated 21.08.2000 and 23.08.2000 was dismissed, the present Revision came to be filed under Section 115 of the CPC.

2) The brief facts of the case are as under:-

The revision petitioners herein filed E.A.No.921 of 2011 under Section 47 of the CPC against the respondents, who are the Decree Holder and remaining J.Drs., in E.P.No.84 of 2008 in O.S.No.225 of 1994 seeking to declare the judgment and decree passed in O.S.No.225 of 1994, as nullity and in-executable in respect of the E.P. schedule property (220 sq. yards) covered under the gift deeds dt:21.08.2000 and 23.08.2000. It is stated that pending the above suit, the deceased/1st respondent executed Exs.A-1 and A-2 gift deeds in favour of the deceased/1st petitioner to an extent of 133 sq.

yards and 88.66 sq. yards respectively out of the total plaint schedule property. It is further averred in the petition that the suit filed by the deceased/1st respondent was decreed on 12.11.2001 and aggrieved by the said judgment and decree, the respondents 4 and 5 preferred A.S.No.2891 of 2001 before this Hon'ble Court which has been disposed off basing on a compromise arrived at vide CMP.No.11156 of 2002 dated 18.06.2006. Subsequently, the deceased/1st respondent filed ASMP.No.2256 of 2006 to set-aside the compromise decree, in respect of 220 sq. yards and the same was allowed giving liberty to both the parties i.e., the deceased/1st respondent and the deceased/1st petitioner to take appropriate steps with regard to their rival contentions in respect of 220 sq. yards of schedule property. It is further stated in the petition that the deceased/1st respondent executed two gift deeds in favour of the deceased/1st petitioner, who is their father (i.e., father of petitioners 2 to 4), conveying her right, title and interest in the E.P. schedule property. By suppressing the said fact, the deceased/1st respondent obtained a decree for the entire plaint schedule property including this E.P. schedule property. As such the deceased/1st respondent is ceased to be the owner of the E.P. schedule property, as he executed a registered gift deed in favour of the deceased/1st petitioner. Hence, the decree in respect of 220 sq. yards, which is the E.P. schedule property, has become in-executable and sought to declare the decree in respect of 220 sq. yards (EP schedule property) as nullity. However, pending the said E.A., the 1st petitioner died and the petitioners 2 to 4, who are the children of the deceased/1st petitioner, have come on record as his legal representatives.

3) It is contended that during the life time of deceased/1st petitioner, executed a registered Will dated 23.03.2005 bequeathing the "A" marked portion in the plan appended to the Will, to his wife Smt. Venkataramanamma. But, the said Venkataramanamma, who is the mother of the petitioners 2 to 4, pre-deceased the deceased/1st petitioner. Under the terms of the said Will, the 2nd petitioner has become the absolute owner of "A" marked portion in the plan attached to the Will. Similarly, under the terms of the said Will, the deceased/1st petitioner bequeathed the "B" marked portion of the plan appended to the Will in favour of the 4th petitioner with absolute rights. The deceased/1st petitioner did not make any arrangement in the Will with regard to the portion shown as vacant site in the plan appended to the Will. As such, the petitioners 2 to 4 jointly succeeded to the portion shown as vacant site in the plan appended to the Will, with equal rights. Hence, the petitioners 2 to 4 have claimed right over the E.P. schedule property through their father deceased/1st petitioner.

4) The deceased/1st respondent filed counter denying the averments made in the petition and contended that the compromise

decree passed in A.S.No.2891 of 2001 has been amended vide ASMP.No.2256 of 2007, wherein this Hon'ble Court was pleased to modify the decree that the decree passed by the trial court in O.S.No.225 of 1994 in respect of 220 sq. yards holds good and the 1st respondent has got every right to obtain decree for delivery of the said property by executing the decree in O.S.No.225 of 1994. It is also pleaded in the counter that the alleged gift deeds dated 21.08.2000 and 23.08.2000 were brought into existence by playing fraud, undue influence and coercion on her and the said documents were never acted upon. Further, the deceased/1st petitioner had also never been put in possession of the E.P. schedule property pursuant to the alleged gift deeds. It is also pleaded that if really the alleged gift deeds have been executed, the deceased/1st petitioner could have been filed them in the suit O.S.No.225 of 1994 itself as the alleged gift deeds were executed much prior to the decree passed in O.S.No.225 of 1994. It is also averred that the though the alleged gift deeds have been cancelled by way of registered cancellation deeds through Exs.A-3 and A-4, the deceaed/1st petitioner did not challenge the said cancellation deeds executed by the deceased/1st respondent, as such the said deeds attained finality. As the cancellation deeds attained finality, the deceased/1st petitioner will not acquire any title over the E.P. Schedule property and as such sought for dismissal of E.A.

5) Basing on the pleadings made by the petitioners and respondents, the trial court framed the following points for consideration:

1. Whether the gift deeds dated 21.08.2000 and 23.08.2000 said to have been executed by the first respondent were acted upon or not?
2. Whether the decree in O.S.No.225 of 1994 has become in-executable?
3. To what relief?

6) After considering the rival submissions made, the trial court dismissed the E.A. holding that the gift deeds-Exs.A-1 and A-2, relied upon by the petitioners were not acted upon. It also held that merely because the petitioners have constructed a house in the E.P. schedule property, without having any title over the property, they cannot seek rejection of the execution of the decree, as Exs.A-1 and A-2-Gift deeds were not acted upon. Questioning the said order and decree, the present C.R.P. came to be filed.

7) Heard the learned counsel for the petitioners and respondents and perused the material on record.

8) It is the specific contention of the petitioners that the deceased/1st petitioner has filed the application under Section 47 of C.P.C., to declare the judgment and decree passed in O.S.No.225 of 1994 as a nullity and in-executable in respect of E.P. schedule property (220 sq. yards) as the said property was covered under gift

deeds dated 21.08.2000 and 23.08.2000. Since the said gift deeds are executed by the deceased/1st respondent in favour of the deceased/1st petitioner, the deceased/1st petitioner has become the owner of the property. During the life time of the deceased/1st petitioner, he has executed Ex.A-12-Will in favour of his children i.e., petitioners 2 to 4 and as such the decree passed in O.S.No.225 of 1994 in respect of 220 sq. yards (E.P. schedule property) cannot be executed.

9) It is borne out from the record that Exs.A-1 and A-2-gift deeds were executed by the deceased/1st respondent was much prior to the decree in O.S.No.225 of 1994. But the said gift deeds were not filed in O.S.No.225 of 1994. Even though the deceased/1st petitioner was a party to the suit, he did not choose to claim the schedule property covered by the gift deeds. It is also borne out from the records that Exs.A-1 and A-2 gift deeds executed by the deceased/1st respondent have been cancelled by the deceased/1st respondent under Exs.A-3 and A-4 and it attained finality, as the deceased/1st petitioner did not question the said cancellation. Hence, the deceased/1st petitioner cannot claim over the E.P. Schedule property. Since the very claim is based on the gift deeds Exs.A-1 and A-2 which did not exist as on the date of the filing of E.A.No.921 of 2001, due to their cancellation way back in the year 2005 itself, the deceased/1st petitioner has no right to claim over the E.P.

schedule property and the claim made by the petitioners/2 to 4, who stepped into the shoes of the deceased/1st petitioner, basing on Ex.A-12 will, cannot also be accepted as the original documents i.e., Exs.A-1 and A-2 gift deeds which are the source of title executed by the deceased/1st respondent were not available in view of the cancellation which attained finality.

10) It is also manifest from the record that admittedly the deceased/1st petitioner was a party to O.S.No.225 of 1994 and at no point of time he claimed the E.P. schedule property under Exs.A-1 and A-2 either in the pending suit or in the appeal A.S.No.2891 of 2001 before this Court. He kept quiet for almost 20 years without giving any reasons for the same. Therefore, the deceased/1st petitioner now cannot claim title over the E.P. schedule property on the ground that the deceased/1st respondent had executed Exs.A-1 and A-2-gift deeds in his favour, which did not exist. Having suppressed the material facts on record and having failed to prove Exs.A-1 and A-2 in O.S.No.225 of 1994, the deceased/1st petitioner cannot claim title over the E.P. schedule property based on Exs.A-1 and A-2 gift deeds, which were not acted upon, as they were cancelled.

11) Now, the petitioners have filed the present application under Section 47 of the C.P.C stating that the decree passed in O.S.No.225 of 1994 is nullity and in-executable as it was covered by Exs.A-1 and A-2-gift deeds. It is to be seen that though section 47 of the C.P.C.

contemplates that all questions arising between the parties to the suit, in which the decree was passed or their representatives and relating to the execution, discharge, or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. It does not mean that the party can object and stall the execution of decree on such grounds, which are not supported by any material. As stated earlier, in the instant case, the claim of the petitioners is based on the gift deeds executed by the deceased/1st respondent which were not in existences on the date of filing of the present application and the deceased/1st petitioner did not challenge the cancellation deeds made by the deceased/1st respondent, which cannot be corrected by the executing court. Further, it is not the case of the petitioners that the court which passed the decree was lacking inherent jurisdiction to pass such decree. Admittedly, the decree passed in O.S.No.225 of 1994 in respect of the E.P. schedule property has become final and as such the executing court cannot go behind the decree, in view of the judgment of the Apex Court in **Bhavarlal Bhandari v. M/s. Universal Heavy Mechanical Lifting Enterprises**[1] and in view of the judgment in **Dhurandhar Prasad Singh v. Jaiprakash University and others**[2] wherein it was held that the exercise of powers under Section 47 C.P.C., is microscopic and lies in a very narrow inspection hole.

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[1] 1998(9) Supreme 234
[2] AIR 2001 SC 2552

12) Viewed from any angle, there are no merits in the present C.R.P., and I do not find any irregularity and illegality warranting interference in the order passed by the court below and the C.R.P. is liable to be dismissed.

13) Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions pending if any in this C.R.P. shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

Dt:06.07.2018
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