

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.3159 of 2018

Order:

Aggrieved by the dismissal of an application filed under Order XVI, Rule 1 CPC to summon the Joint Sub Registrar for production of the thumb impression contained in certain registered sale deeds in respect of a person by name Majumdar Srinivasa Rao, the plaintiff in a suit for declaration has come up with the above revision.

2. Heard Mr. Y.Rama Rao, learned counsel for the petitioner.

3. The petitioner filed a suit in O.S.No.158 of 2010 on the file of the VIII Additional District and Sessions Judge, Vijayawada, praying for a declaration that she is the absolute owner of the suit schedule property and that 4 different sale deeds executed by the II Additional Senior Civil Judge in execution of a decree for specific performance were null and void and for a consequential recovery of possession.

4. At the time when the matter was to be taken up for trial, the petitioner/plaintiff moved an application for summoning the Joint Sub Registrar to produce the registers relating to the registration of certain sale deeds, so as to have the thumb impressions and signatures of one Majumdar Srinivasa Rao contained in those sale deeds, sent for examination by the handwriting expert. The said application

was dismissed by the Trial Court forcing the plaintiff to come up with the above revision.

5. It appears from the plaint filed by the petitioner, a decree was obtained by the defendants in a suit in O.S.No.115 of 2007, for the specific performance of an agreement of sale. The suit was decreed and in execution of the decree, 4 different sale deeds were executed by the II Additional Senior Civil Judge, Vijayawada, in E.P.No.92 of 2007. These sale deeds were registered as Document Nos.4076, 4077, 4078 and 4079 of 2008, dated 29-7-2008.

6. The petitioner went before the Civil Court by filing O.S.No.158 of 2010 seeking a declaration of her title and for setting aside the sale deeds.

7. In order to prove that the decree obtained in O.S.No.115 of 2007 was a collusive decree, based upon a fabricated agreement of sale, not containing the signature of the original owner, the petitioner wanted to summon the Joint Sub Registrar. But as rightly observed by the Trial Court, the petitioner has not sought a declaration that the decree in O.S.No.115 of 2007 is null and void. Without attacking a decree, the sale deeds executed in execution of the decree cannot be attacked. Attacking something done in execution of a decree without attacking the decree itself, may not be legally permissible.

8. The learned counsel for the petitioner, relying upon the decision of a Division Bench of this Court in **Suraneni**

Lakshmi v. B.Venkata Durga Rao¹ submitted that there is no necessity to challenge a document which is legally null and void. In the said judgment, the Division Bench of this Court extracted a portion of the judgment of the Delhi High Court, in *Sanjay Kaushish v. D.C. Kaushish* [AIR 1992 Delhi 118], which reads as follows:

“Be that as it may, in my view, the well settled principle of law is that if a particular document or decree is void the person affected by the said document or decree can very well ignore the same and file a suit seeking substantive relief which may be available to him without seeking any declaration that the said decree or document is void or any consequential relief of cancellation of the same.”

9. Based upon the observations contained in the judgment of the Delhi High Court, extracted in paragraph-11 of the judgment of the Division Bench of this Court, it is contended Mr. Y.Rama Rao, learned counsel for the petitioner, that there is no necessity to challenge the decree.

10. But I do not agree. A document stands on a completely different footing than that of a Court. There are cases where a document can be ignored if it is null and void and title can be sought to be established independently. But when a sale deed is attacked and if it is found that such sale deed has been executed by the Court in the execution proceedings pursuant to a decree, it is not possible to ignore the decree and attack the execution.

¹ 2011(2) ALT 501

11. Therefore, the appropriate remedy open to the petitioner is only to seek the appropriate relief in the suit itself. Without seeking such a relief, other things cannot follow. Therefore, the civil revision petition is dismissed. It will be open to the petitioner to work out appropriate remedies available under law. The interlocutory applications, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

22nd June, 2018.
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