

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD)Nos.2819,2820,2821 of 2007

and CMP.Nos.19770, 19771, 19772 of 2017,

and C.R.P.(NPD) Nos.2907 of 2007 and 3933 of 2010

C.R.P.(NPD)No.2819 of 2007

B.S. Satheesh Raj

.. Revision Petitioner/
Petitioner/Claimant

Vs.

1. Bank of India
Rep.by its Manager
Vellore Branch, Vellore

2. M/s. Shankar Match Industry

3. A.Palani

4. B.N.Sridharan

5. Tmt.B. Prema

6. Tmt.Hemalatha

.. Respondent/Plaintiff

C.R.P.(NPD)No.2820 of 2007

B.S. Satheesh Raj

.. Revision Petitioner/
Petitioner/Claimant

Vs.

1. Bank of India
Rep.by its Manager
Vellore Branch, Vellore

..Respondent 1/Decree Holder/
Respondent 1

2. M/s. Sridhar Match Industry
3. B.N. Sridharan
4. Tmt.B. Prema
5. Tmt.Hemalatha

.. Respondents 2 to 5/
Respondents 2 4,5,6/
Judgment Debtors

C.R.P.(NPD)No.2821 of 2007

B.S. Satheesh Raj

.. Revision Petitioner/
Petitioner/Claimant

Vs.

1. Bank of India
Rep.by its Manager
Vellore Branch, Vellore

..Respondent 1/Decree Holder/
Respondent 1

2. 3. B.N. Sridharan
3. Tmt.B. Prema
4. Tmt.Hemalatha

.. Respondents 2 to 4/
Respondents 3 to 5/
Judgment Debtors

C.R.P.(NPD)No.2907 of 2007

B.S. Satheesh Raj

.. Revision Petitioner/
Petitioner/Claimant

Vs.

1. Bank of India

Rep.by its Manager
Vellore Branch, Vellore

.. Respondent 1/Decree Holder/
Respondent 1

2. M/s. Sumathi Match Industry
3. Smt. Hemalatha
4. N. Sridharan
5. Tmt.B. Prema
6. Tmt. Hemalatha

.. Respondents 2 to 6/
Respondents 2 4,5,6,7/
Judgment Debtors

C.R.P.(NPD)No.3933 of 2010

B.S. Satheesh Raj

.. Revision Petitioner/
Petitioner/Claimant

Vs.

1. Bank of India
Rep.by its Manager
Vellore Branch, Vellore

.. Respondent 1/Decree Holder/
Respondent 1

2. M/s. Vijaya Industry
3. R. Palani
4. B.R. Narasimman (died)
5. B.N. Sridharan
6. Tmt.B. Prema
5. Tmt.Hemalatha

.. Respondents 2 to 7/
Respondents 2 to 7/
Judgment Debtors

PRAYER: Civil Revision Petition filed under section 115 of Code of Civil Procedure against the fair and decreetal Order dated 24.07.2007, 7.10.2010 made in E.A.Nos.110, 111,112, 109 of 2003, 37 of 2010 in E.P.No.175 173, of 1996, 111 of 1991, 177 and 179 of 1996 in O.S.No.192, 177, 176, 183, 193 of 1986 respectively.

For Revision Petitioners : Mr.N.S. Manoharan

For Respondents : Mrs. G. Jayanthi for
M/s.F.B.Benjamin George (for R1)

COMMON ORDER

These Revision Petitions have been filed against the order passed by the Execution Court in dismissing the application filed to raise the attachment in respect of 7 cents of land in T.S.No.287/2.

2. The facts leading to file revision is as follows:

2.(a) The First Respondent bank have filed five different suits as against other Respondents for recovery of money in the year 1986. It appears that the suit has been decreed. The First Respondent filed Execution Petition in the year 1996. In the meanwhile Third Defendant in the main suit one Mr.B.R.Narasimman has executed a Gift Deed in respect of 7 cents in favour of the Revision Petitioner on 16.8.1990. Thereafter the First Respondent has sought attachment of the entire property. Accordingly, Execution Court passed an order of attachment in the year 2003. Immediately, the Revision Petitioner filed an application under Order 21 Rule 58 of C.P.C., to raise attachment. However, the Execution Court dismissed the application on the ground that the Gift Deed is not valid and the same has been executed only to defeat the rights of the creditor. Aggrieved over the same, the present revision has been filed.

3. Learned counsel for the Revision Petitioner submitted that on the

day when the attachment was effected, Respondents 2 to 7 have no right in the suit property. In the suit property an extent of 7 cents have already been transferred in the name of the Revision Petitioner in the year 1998. There was no attachment of the property till 2003. Hence submitted that the Execution Court has simply come to the conclusion that the Gift Deed is not maintainable without any basis.

4. Whereas the learned counsel appearing for the First Respondent submitted that the bank has filed suit in the year 1986 and the suit was decreed in the year 1987. Whereas Gift Deed was executed in the year 1990 much after the decree, only in order to defeat the rights of the bank. Hence, the Execution Court has correctly considered and ordered for execution which does not require any interference.

5. I have head both sides and perused the materials. It is not in dispute that the bank has filed the suit in the year 1986 and the decree has been passed in the year 1987. However, the bank has not taken any efforts to execute the decree. Only in the first time in the year 1996, they filed an application to execute the decree. On filing the application to attach immovable properties of the judgment debtor, attachment was passed only in the year 2003. These facts are not in dispute. It is also not in dispute that the entire extent of the property

belong to judgment debtor is around 50 cents in S.F.No.787/2. Whereas Ex.A.1 filed in the Claim application confined only to 7 cents that means what has been transferred under gift deed in favour of the Revision Petitioner is only 7 cents and remaining 43 cents are in the name of the Judgment debtors. At any event, admittedly on the date of attachment the title in respect of 7 cents has already been transferred in favour of the Revision Petitioner. The suit is filed for mere recovery of money and not even attachment was sought during the pendency of the suit. Even after the decree, Execution Petition was filed after a decade and attachment order was passed only in the year 2003. These facts are not in dispute.

6. Section 64 of C.P.C. deals with private alienation made after attachment. If the properties already attached, subsequent to such attachments any private alienation is made, such private alienation is void as per Section 64 of C.P.C. Therefore, it is very clear that the transaction takes place after the attachment passed by the Court would become void transaction. The law declares such transaction is void. In the absence of any attachment the transfer will not become void. At the most it could be presumed that such transfer made with the intent to defeat the rights of the decree holder. Even such conclusion is established, such transfer is not void but only a voidable. In that situation also to avoid documents initiation of action is required on the part of the decree

holder. Unless those documents are annulled within the stipulated period one cannot say that those transfers are not valid. Therefore this Court is of the view that the Gift Deed in favour of the Revision Petitioner has not been avoided by the bank nor they proved that the same was intended to defeat their rights. Further, on the date of attachment in the year 2003, the property has already transferred in the name of the Revision Petitioner. Without his presence in the executing proceedings such property cannot be attached. Admittedly only 7 cents have been settled in favour of the Revision Petitioner and remaining properties are still in the name of the Judgment debtor. Accordingly attachment is raised in respect of 7 cents settled in favour of the Revision Petitioner and the First Respondent is at liberty to proceed with remaining 43 cents stand in favour of the Judgment Debtor.

7. With the above observation the Revision Petitions are allowed. Consequently, connected Civil Miscellaneous Petitions are closed. The Execution court shall dispose of the Execution Petitions as per law with regard to 43 cents, the remaining property of the judgement debtor.

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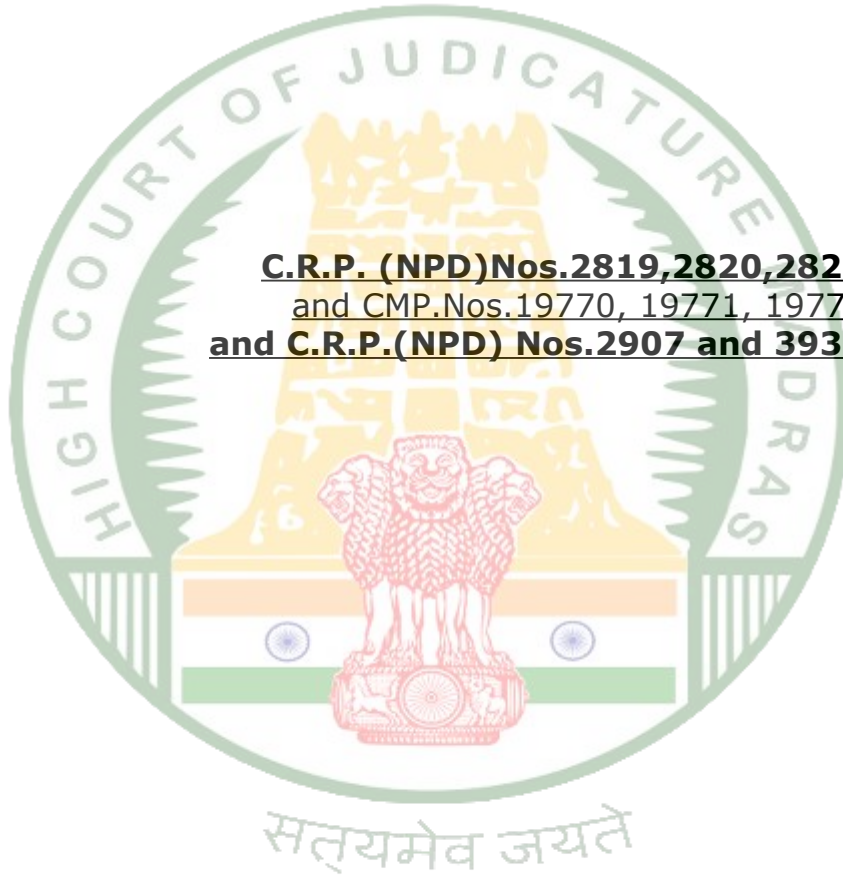
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Index : yes/no

Speaking order/non speaking order

N.SATHISH KUMAR, J.

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