

Reserved on : 25.04.2019

Delivered on : 26.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.04.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1495 of 2012
and M.P.No.1 of 2012

1.Duraikannu Chettiar

2.Parisan

... Petitioners

Vs

1.Periyasami

2.Sundaramoorthy

... Respondents

Civil Revision Petition under Section 115 of the Code of Civil Procedure against the fair order and decreetal order passed by the District Munsif Court, Panruti dismissing E.P.No.31 of 1997 in O.S.No.2811 of 2981 dated 29.11.2011.

For Petitioners : Mr.R.Gururaj

For Respondents : Mr.G.Suriyanarayanan
for Mrs.Jayasree Balaji (R1)

R2 - no appearance

ORDER

Challenging the order passed in E.P.No.31 of 1997 in O.S.No.2811 of 1981 on the file of the District Munsif Court, Panruti, the plaintiff and the purchaser of the property from the plaintiff have filed the above Civil Revision Petition.

2.Originally, the 1st petitioner filed a suit in O.S.No.2811 of 1981 on the file of the District Munsif Court, Cuddalore for declaration, recovery of possession and for other reliefs. The said suit was decreed *exparte* on 05.07.1982. Subsequently, the 1st petitioner/plaintiff sold the property in favour of the 2nd petitioner by a registered Sale Deed dated 22.07.1988.

2.1.Thereafter, the 2nd petitioner filed a suit in O.S.No.1024 of 1988 on the file of the District Munsif Court, Panruti for declaration and injunction. The respondents herein were the defendants 1 & 2 in O.S.No.1024 of 1988. The Trial Court, by judgment and decree dated 27.11.1992, dismissed the suit in O.S.No.1024 of 1988. Aggrieved over the same, the 2nd petitioner preferred an appeal in A.S.No.14 of 1993 on the file of the Additional Sub Court, Cuddalore and the Lower Appellate Court also confirmed the judgment and decree of the Trial Court and dismissed the appeal on 19.02.1996.

2.2.Aggrieved over the concurrent judgments of the Courts below,

the 2nd petitioner preferred a Second Appeal in S.A.No.951 of 1996 before this Court and this Court, by a common order dated 06.04.2010, dismissed the Second Appeal and confirmed the judgments and decrees of the Courts below. Pursuant to the decree passed in O.S.No.2811 of 1981, the petitioners jointly filed an Execution Petition in E.P.No.31 of 1997 on the file of the District Munsif Court, Panruti.

2.3.The Executing Court, by order dated 14.07.1997, dismissed the Execution Petition in E.P.No.31 of 1997 holding that the Execution Petition is not maintainable and also on the ground that the petitioners have suppressed the fact of dismissal of O.S.No.1024 of 1988, which led to the filing of the Second Appeal in S.A.No.951 of 1996. As against the order passed by the Executing Court in E.P.No.31 of 1997, the petitioners filed a Civil Revision Petition in C.R.P.(NPD).No.51 of 1998. This Court took up both the matters (i.e.) S.A.No.951 of 1996 and C.R.P.(NPD).No.51 of 1998 together and by a common judgment dated 06.04.2010 dismissed the Second Appeal and allowed the Civil Revision Petition by setting aside the order passed by the Executing Court in E.P.No.31 of 1997 and remitted the matter back to the Executing Court for fresh consideration.

3.Admittedly, the petitioners have not challenged the judgment

passed in S.A.No.951 of 1996 and the same has become final. While dismissing the Second Appeal, this Court confirmed the judgments and decrees passed by the Courts below and observed as follows:

“...

22. The lower appellate court found that Ex.A-1 sale deed is not true and genuine and the decree in O.S. No. 2811/1981 is not binding on the respondents 1 and 2. The lower appellate court also found that the purchase made by the appellant from Duraikannu Chettiar is not valid. The appellant has not come to the court with clean hands. In fact, he has suppressed the fact with regard to the possession. The appellant having specifically pleaded that he is in possession of the property knowing fully well that he is not in possession of the property, which fact was supported by the decree in O.S.No.2811/1981.

...

27. With regard to the Civil Revision Petition, the Execution Court dismissed the E.P. on the ground that the petitioners have suppressed the fact of dismissal of O.S.No.1024 of 1988 which led to the filing of the the above second appeal. The second petitioner was not a party in O.S. No.2811/1981. The suit was filed only by the first petitioner namely, Duraikannu Chettiar. The Execution Court dismissed the E.P. as not maintainable. It is not in dispute that the first petitioner obtained a decree in O.S.No. 2811/1981. For the execution of the decree in O.S.No. 2811/1981, the petitioners have filed E.P.No.31 of 1997. Therefore, it

cannot be said that the Execution Petition is not maintainable. Therefore, fair and final order of the Execution Court made in E.P.No.31 of 1997 is liable to be set aside and in the interest of justice, the parties be given another opportunity to prosecute the execution petition on merits.

28. Therefore, the fair and final order of the Execution Court made in E.P.No.31 of 1997 in O.S.No.2811 of 1988 on the file of District Munsif Court, Panruti are set aside and the matter is remanded to the District Munsif Court, Panruti to decide the matter afresh on merits and in accordance with law, after giving opportunity of hearing to both the parties. The execution court is directed to issue notice to all the parties informing the date of hearing to them. The Civil Revision Petition is allowed.”

4. After remand, the Executing Court, by order dated 29.11.2011, dismissed the Execution Petition in E.P.No.31 of 1997 finding that by filing a suit in O.S.No.1024 of 1988 for declaration and for permanent injunction, the 2nd petitioner himself had established that the respondents are not in possession of the suit property. Contrary to the prayer sought for in O.S.No.1024 of 1988, the 1st petitioner obtained an *ex parte* decree for declaration and for recovery of possession. Since the 2nd petitioner had contended that the respondents are not in possession of the suit property, the Executing Court had dismissed the Execution Petition. That apart, the

Executing Court also took into consideration the finding given by the Lower Appellate Court viz., Additional Sub Court, Cuddalore in A.S.No.14 of 1993 to the effect that Ex.A1 Sale Deed dated 25.09.1973 executed in favour of the 1st petitioner is not genuine and the decree in O.S.No.2811 of 1981 is not binding on the respondents herein. This Court, while dismissing the Second Appeal in S.A.No.951 of 1996, confirmed the findings of the Courts below and this Court also considered the findings with regard to Ex.A1 Sale Deed and the findings of the Lower Appellate Court that the decree in O.S.No.2811 of 1981 is not binding on the respondents. The Lower Appellate Court also found that the purchase made by the 2nd petitioner from the 1st petitioner is not valid, which finding was also confirmed by this Court in S.A.No.951 of 1996.

5.When the Lower Appellate Court has categorically held that the Sale Deed executed in favour of the 1st petitioner is not genuine and that the purchase made by the 2nd petitioner is not valid and that the decree passed in O.S.No.2811 of 1981 is not binding on the respondents, which finding was also confirmed by this Court in the Second Appeal and the same has also become final, the Executing Court cannot take a different stand now.

6.The learned counsel appearing for the petitioner, in support of his

contention, relied upon a judgment reported in *AIR 1960 Supreme Court 213 [Kedar Nath Motani and others Vs. Prahlad Rai and others]* wherein the Hon'ble Supreme Court held as follows:

“...

15. The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by mis-stating the facts. If, however, the matters is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail.

16. We must remember that benami transactions are common in India, and have always been recognised. They are entered into for a variety of reasons, and the benamidar holds the property in trust for his principal. In the present case, the object of the benami transaction was merely to keep the property from being resumed by the Bettiah Raj on

the expiry of the lease in favour of Radhumal, which undoubtedly the Bettiah Raj could have done, if it had been so minded. The information about the benami transaction was, however, not withheld from the Bettiah Raj, and even with that knowledge, the Bettiah Raj took no action against Radhumal or the benamidars. The plaintiffs recanted inasmuch as they asserted their true title and true facts before the occasion for the Raj to act arose. Thus, the fraud, though intended, was not perpetrated, because the fraud could only be effected at the end of the lease term, and the locus poenitentiae which the lessee possessed was duly used long before the expiry of the lease. The illegality was also of a trivial character, inasmuch as the signatures of Prahlad Rai and others were made on the relative documents on the faith of their close friendship and relationship and under the assumption that no objection from them would proceed to the making of the application on their behalf and to the signing of the B. H. forms in their names. The appellants were not required to prove this fact as part of their cause of action, and indeed, if the answering respondents are to be believed, they asserted as vehemently that the signatures were not forged but were their very own.”

7. Since the findings with regard to the purchase made by the 1st petitioner and the subsequent purchase made by the 2nd petitioner were found to be invalid and that the decree passed in O.S.No.2811 of 1981 is not binding on the respondents and that the said findings have become final,

the Executing Court cannot take a different stand now. Therefore, the order passed by the Executing Court is proper.

8. Though there is no dispute with regard to the ratio laid down by the Hon'ble Supreme Court, in view of the above facts and circumstances, the ratio laid down in the above referred judgment is not applicable to the present case.

9. In view of the reasons stated above, I do not find any error or irregularity in the order passed by the Executing Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No

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Internet : Yes

Speaking/Non-speaking order
va

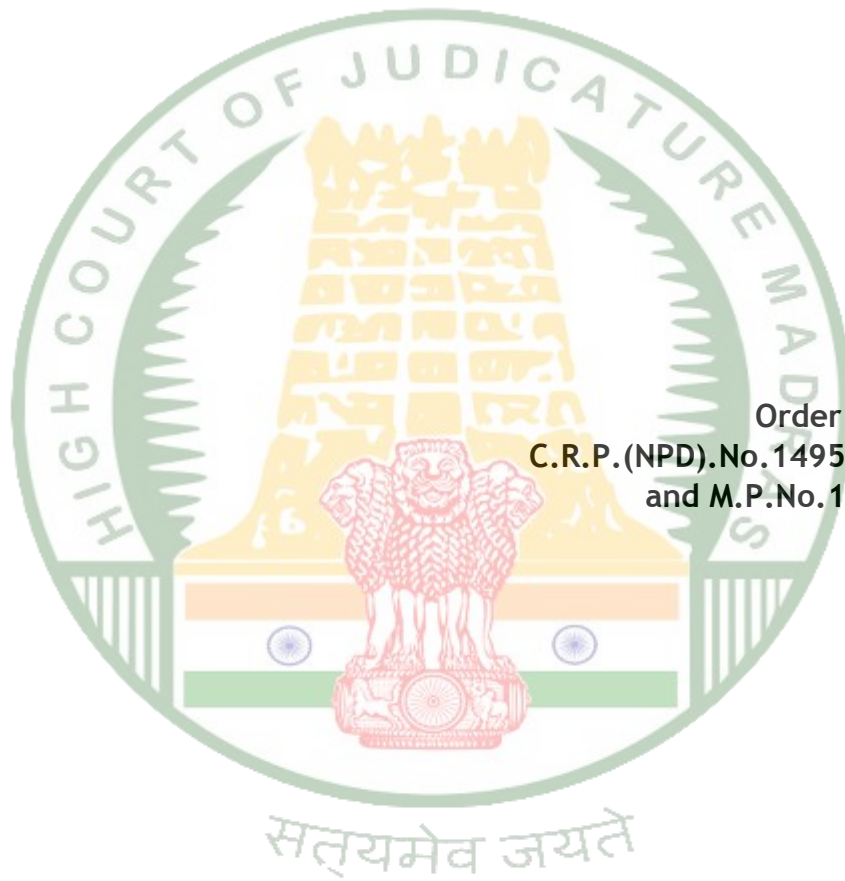
To

The District Munsif Court,
Panruti.

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M.DURAIWAMY,J.

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Order made in
C.R.P.(NPD).No.1495 of 2012
and M.P.No.1 of 2012

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