

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4651 of 2013

and

M.P.No.1 of 2013

R.Gunasekaran

Petitioner

Vs

1. Sabapathy
2. Prakasam (Died)
3. Kalaiselvi
4. P.Raja
5. P.Sreedharan
6. Adhiselvam
7. Balasubramaniam
8. N.Ganesan
9. V.K.Mani

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order passed in I.A.No.1 of 2011 in I.P.No.1 of 1999, on the file of Subordinate Court, Athur, Salem.

For Petitioner : Mr.K.R.Samratt

For Respondent : R1 and R6 – Mr.S.R.Balasubramaniam
R2 – Died
R7 to R9 – M/s. Zeenath Begum

ORDER

Aggrieved over the order dated 31.07.2013 passed in IA No.1 of 2011 in IA No.1 of 1999, on the file of Subordinate Court, Athur, Salem, the petitioner who is the petitioner in the above referred IA has filed this application and seeks the relief to set aside the above referred order.

2. Before the trial court, the respondents 1 to 6 in this Civil Revision Petition have filed the application under Section 9 of Provincial Insolvency Act for the relief to issue notice to the respondents, adjudge the petitioner/1st respondent as insolvent and order vesting of his properties with the official receiver, Salem. When the said application is due for enquiry, the petitioner herein has filed an application under Order 8 Rule 9 of CPC, seeking the relief to receive the additional counter in the above referred IP.

3. In the affidavit filed in support of the petition filed in IA No.1 of 2011, the petitioner has stated that the respondents have filed creditor I.P against the petitioner and others, who got nominal sale deed from the petitioner. The alleged sale deed dated 20.05.1996 was canceled on 05.02.1999, which has been executed by the petitioner in favour of one Balasubramaniam. It is further stated that for informing the said occurrence, filing an additional counter is necessary.

4. Resisting the claim made by the petitioner, the respondent No.3 has filed the counter and states that the application filed by the petitioner is only for the purpose of dragging on the proceedings. The further allegation made by the respondent is that the alleged cancellation is unilateral and self serving, which is not valid in law. Further, no notice was issued to the affected parties, by intimating the details about the cancellation of deed. According to him, the alleged sale deed dated

15.04.1999 cannot be accepted and valid. Further, the respondent has stated that filing counter in original petition/filing additional written statement, after witnesses have been examined cannot be permitted. Similarly, in the counter affidavit filed by the respondent, he has stated that after lapse of 10 years, the petitioner disclosed the details of the cancellation of sale deed, and the same cannot be acceptable one.

5. Having considered all the materials placed before him, the learned Subordinate Judge, Athur, Salem has observed that since the petition filed by the revision petitioner is belated one i.e after the examination of PW 1 and hence the same cannot be accepted. Ultimately the trial Court has dismissed the application.

6. Today when the petition came up for hearing, the learned counsel appearing for the petitioner would contend that, in the petition filed by the respondent before the trial Court, they made allegations against the petitioner as after availing loan from various persons, he purposely defrauded the respondents and sold out the property on 12.05.1998. In fact, the said sale was a conditional one and the same was canceled on 15.02.1999, In order to establish the real fact, the petitioner is intended to file additional counter. The learned counsel further submitted that there is nothing wrong in filing the application to receive the additional counter affidavit after examining the witnesses.

7. Per contra, the learned counsel appearing for the respondent would contend that after examining the witnesses, filing the petition to receive counter is not maintainable and accordingly the impugned order passed by the trial court needs no interference by this Court.

8. The learned counsel appearing for the petitioner relied upon the judgment reported in 2009 (15) SCC 528, wherein our Honourable Apex court has held as follows:-

10. So far as this ground is concerned, we do not find that delay is a ground for which the additional counter statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleading or filing of additional counter-statement. At the same time, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter-statement which could easily be compensated by costs.

Further, in the judgment (2005) 4 MLJ 119, this court has held as follows:-

“The provisions of Order 8 rule 9 of Civil Procedure Code, is liberal in its application giving wide discretion to the Court, probably to give a chance to the parties to agitate their right even raising subsequent pleas, for which, the Court should not be rigid”

Now, on a careful perusal of the judgments relied upon by the petitioner, no doubt, the delay is not a ground for accepting the additional counter. In the said occasion, it is necessary to verify as due to receiving of additional counter, whether the respondent is going to be prejudiced or not. In the averments made in the application filed in IP No.1 of 1999, the respondent has specifically stated that on 25.09.1998, the petitioner herein purposely sold his property to one Balasubramaniyam, who is the 7th respondent in the main application.

9. Now on going through the sale deed dated 25.09.1999, the recital found in the said sale deed reveals the fact that the said sale is a conditional sale, in which, the purchaser has made an undertaking to pay the loan availed by the petitioner. Since the purchaser not complied the undertaking, by mentioning the same reason, the petitioner has canceled the sale deed on 25.05.1998. Whether the said cancellation is valid or not has to be decided only at the time of trial. In otherwise, if the right vested with the petitioner in the alleged property is uphold, then it is useful and beneficial only to the respondents. So, objecting to receive the

additional counter is unnecessary. Further the findings rendered by the learned Subordinate Judge, Athur in the impugned order as due to the delay, the petition filed by the petitioner cannot be accepted needs interference of this Court.

10. In the light of the above discussions, I am of the opinion that the impugned order dated 31.07.2013 passed by the learned Subordinate Judge, Athur has to be set aside and the same is hereby set aside. Accordingly the Civil Revision Petition is allowed. The learned Subordinate Judge, Athur is directed to receive the additional counter and proceed with the trial in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

31.10.2019

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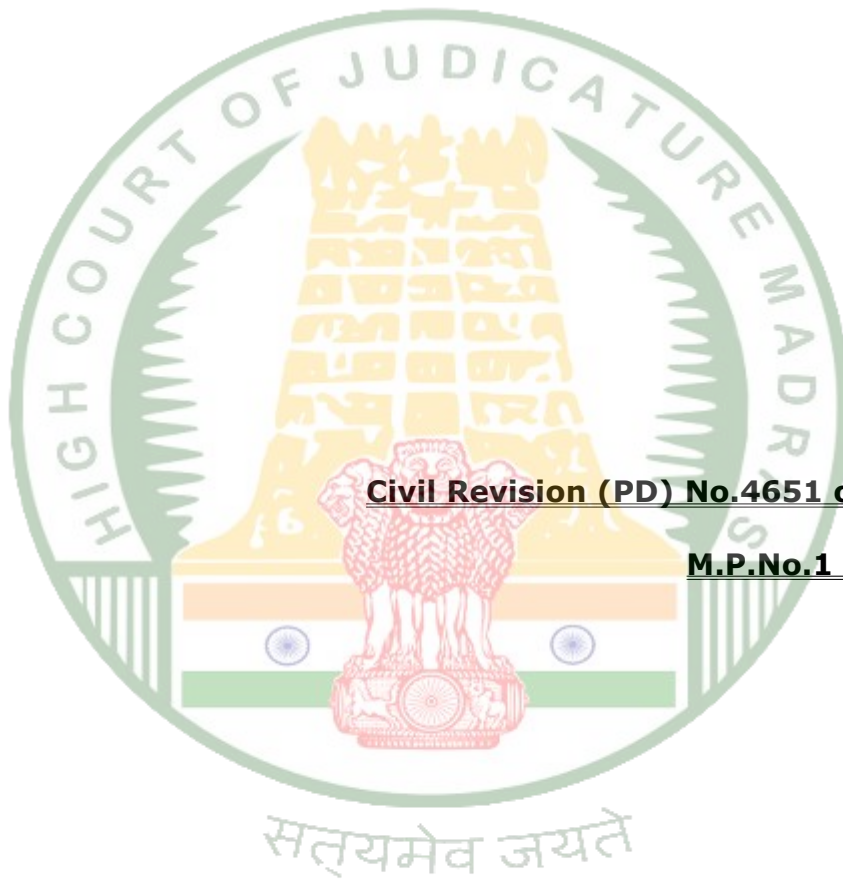
To

The Subordinate Court, Athur, Salem.

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R.PONGIAPPAN, J.,

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