

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.4048 of 2014

Ponniammal

..Petitioner

Vs.

Rajeswari

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decreetal order dated 05.07.2014 passed in E.P.No.25 of 2013 in O.S.No.218 of 2009 on the file of the Sub Court, Vaniyambadi, Vellore District.

For Petitioner : Mr.PA.Sudesh Kumar

For Respondent : Mr.K.Sridhar

ORDER:

Aggrieved over the order dated 05.07.2014 passed in REP.No.25 of 2013 in O.S.No.218 of 2009 by the learned Subordinate

Judge, Vaniyambadi, the petitioner who is the decree holder in the above referred EP filed this Civil Revision Petition and prayed to set aside the above impugned order.

2.Before the trial court the petitioner in this Civil Revision Petition filed a suit in O.S.No.45 of 2009 and seeks the relief of direction directing the defendant to pay the suit amount of Rs.1,54,391/- with further interest from the date of suit till payment in full. The said suit ended against the plaintiff. Aggrieved over the same, the petitioner herein filed an appeal suit in A.S.No.13 of 2012 on the file of the learned III Additional District Judge, Vellore, at Tirupattur and prayed to allow the appeal.

3.The learned III Additional District Judge, Vellore by judgment and decree dated 02.03.2013 allowed the appeal in part and set aside the judgment rendered in O.S.No.218 of 2009 on the file of the learned Sub Court, Vaniyambadi and conclusively held that the plaintiff is entitled to refund the advance paid to the defendant together with interest of 6% per annum from 17.01.2009 till realisation. He further directed the defendant to pay the above said amount to the plaintiff, who is the revision petitioner herein. Based on the said decree, the

petitioner herein filed execution petition in REP.No.25 of 2013 for attachment and sale of the property which is the subject matter of the E.P filed by her. The learned Subordinate Judge, Vaniyambadi after affording opportunity to the respondent / judgment debtor by order dated 05.07.2014 dismissed the REP by holding that the subject matter of the property was already sold in favour of third party and thereby the relief prayed by the petitioner is not at all maintainable.

4.Today, when the Civil Revision Petition is came up for hearing, both the counsel appearing for the petitioner and the respondent present.

5.The learned counsel appearing for the petitioner / decree holder made submission that since the suit filed by the petitioner is for the relief of refund of advance amount, the property which is to be the subject matter of sale agreement is having charges and thereby selling the same during the pendency of the suit proceedings would attract Section 52 of Transfer of Property Act and thereby the sale made by the respondent is nothing but lis pendence and there is no interest to add the subsequent purchaser and hence the decree holder got right to seek attachment and sale of the property and recover the EP amount.

6.Per contra, the learned counsel appearing for the respondent would contend that though the suit filed by the petitioner is based on the sale agreement entered between her and judgment debtor he has not filed the suit for specific performance. He has only filed the suit for the relief of refund of advance amount. Therefore, it cannot be said the charges have been created on the date on which the suit was instituted. He further argued the question of Section 52 of Transfer of Property Act cannot be attracted in this case.

7.Submissions made by the counsel appearing on either side is considered.

8.It is admitted by the either side that the petitioner has filed suit as against the respondent for the refund of advance amount. As per the averments, even though the said suit is based on the sale agreement entered between the petitioner and the respondent, since the relief of specific performance is not asked in the said suit, the suit filed by the plaintiff can be treated as money suit. If the petitioner wants to attach the property, he has to file an application under Order 38 Rule 5 of CPC along with the plaint filed before the trial court. But he has not adopted such mode. He merely filed the suit and prayed

the direction to direct the defendant to pay the advance amount. The learned trial judge had dismissed the suit. However, in the appeal, the learned Subordinate Judge, Vaniyambadi allowed the appeal and set aside the findings given by the learned District Munsif and thereby the money decree was passed in favour of the petitioner as prayed for.

9.It is also further admitted on either side that during the pendency of the suit, the Judgment debtor / the respondent dispossessed the property which is the subject matter of the sale agreement. Only after filing the execution application, the petitioner has known about the alienation made by the respondent in respect to the said property. Accordingly, on the date of sale, there was no order of attachment against the said property. Further it is never denied by either side that the suit is for refund of advance amount. So the charges have not been created on the date on which the suit was instituted. Since it is already observed in the suit that the decree granted by the trial court is nothing but money decree and it can be executed through one of the mode specified under Order 21 of CPC. Only on that score, the petitioner filed execution application before the execution court. The learned trial judge by holding as above correctly concluded that the question of lis pendence does not arise and also on

the date on which the sale was made, no attachment order was pending. So the view taken by the learned trial judge is absolutely within the purview of the law.

10. Therefore, in view of the reasons stated above, the Civil Revision Petition is dismissed. No costs.

23.09.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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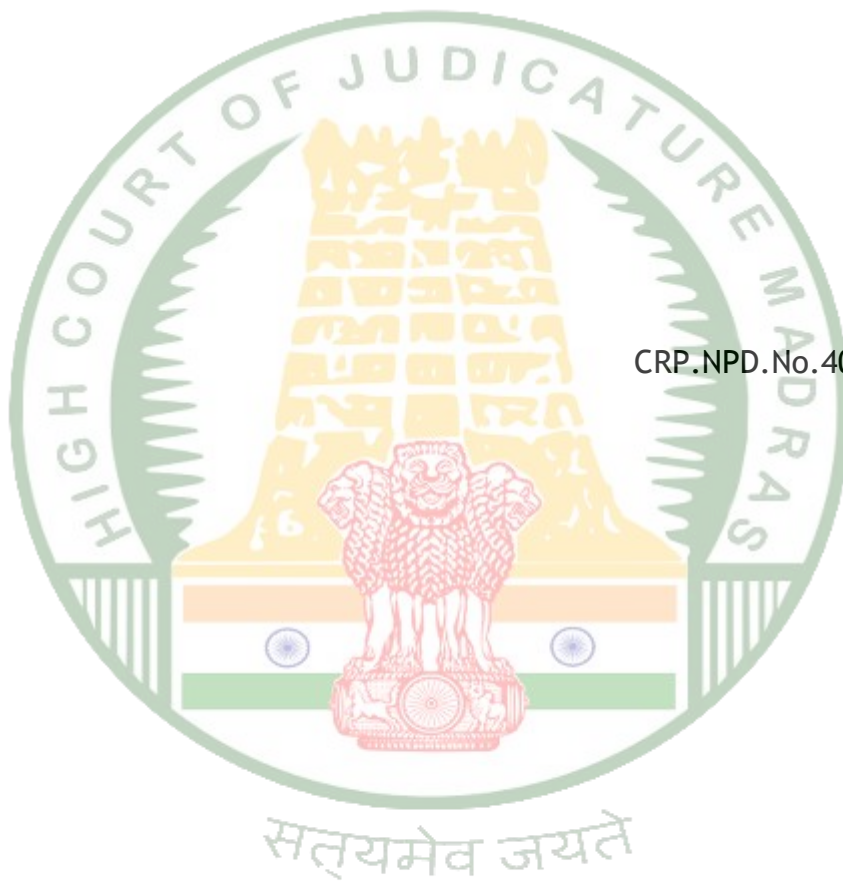
To
The learned Sub Court, Vaniyambadi,
Vellore District.



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R.PONGIAPPAN,J.

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