

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.3125 of 2015

M.Sadhasivam

... Petitioner

Vs.

1. Subramaniam
2. Gandhimathi
3. Arunkumar
4. Sumathi

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decretal order dated 03.04.2013 made in E.P.No.46 of 2010 in O.S.No.136 of 2006 on the file of the learned District Munsif Court, Sathyamangalam.

For Petitioner : N.Manokaran

For Respondents : (Not Ready in Notice)
No Appearance (for R1)
: Mr.V.P.Karthikeyan
(for R2 to R4)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in E.P.No.46 of 2010 in O.S.No.136 of 2006 dated 03.04.2013 on the file of the learned District Munsif Court, Sathyamangalam, thereby, dismissing the Execution Petition.

2. The petitioner is the plaintiff. The deceased/Jaganathan and the first respondent are the defendants. The petitioner filed the said suit for recovery of money and the same was decreed by the judgment and decree dated 27.04.2007. In pursuant to the said decree, the petitioner filed an Execution Petition along with E.A.No.32 of 2010 to transmit the decree from the file of District Musnif-cum-Judicial Magistrate, Palladam to file of the District Munsif Court, Sathyamangalam. The same was allowed and the Execution Petition was numbered as E.P.No.46 of 2010 on the file of the District Munsif Court, Sathyamangalam on 20.07.2010 and notice was issued to the judgment debtors viz., the first and second defendants in the suit.

3. In fact, the petitioner already filed an Execution Petition in E.P.No.24 of 2007 and the same was closed for the reason that the first judgment debtor evaded arrest and the second judgment debtor was declared as insolvent. After the order of Civil arrest, the petitioner filed an Execution Petition in E.P.No.46 of 2010. The Execution Petition was filed to proceed as against the property owned by the deceased/ first judgment debtor. After receipt of notice dated 04.10.2010, the first judgment debtor executed release deed dated 06.10.2010 in favour of his own brother and brother's

wife. Thereafter, he died on 05.12.2010. Therefore, the Court below dismissed the Execution Petition for the reason that if it is a fraudulent transaction, then the petitioner had to work out his remedies in appropriate proceedings. Without doing so and without impleading the parties in whose favour the property had been released, the property cannot be part for sale and dismissed the Execution Petition.

4. The learned counsel for the petitioner submitted that every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable. Therefore, the release deed executed by the deceased/judgment debtor is void and it can be brought for sale to realise the decree amount. In support of contentions, he relied upon the judgment reported in CDJ 2011 MHC 2915 (*S. Mylathal vs. N. Ayyasamy and Ors.*) it is held as follows:-

“6. In the instant case admittedly the judgment debtors having suffered a decree in the suit seeking specific performance, executed the alleged settlement deed in favor of the Petitioner who is none other than the mother of the judgment debtors, without discharging the debts and satisfying the decree. They simply executed the settlement

deed in favor of their mother. In the aforesaid circumstances, as contended by the learned Counsel appearing for Respondents 1 and 2, it is to be construed that the intention of the judgment debtors was only to defeat or delay the creditors namely the Respondents 1 and 2, who have obtained the decree for refund of the advance amount with interest and cost and further it cannot be construed as a bonafide transfer in good faith for valuable consideration in favor of any third party. Had there been a bonafide intention, the judgment debtors would not have settled the property in favor of the Petitioner, their mother without discharging the amount payable to the Respondents 1 and 2/deGREE holders in the suit.”

5. In the case on hand, the first judgment debtor received the notice from the Execution Court on 04.10.2010. Immediately, on 06.10.2010, he executed release deed in respect of the property, which was attached in favour of his own brother and brother's wife. It is marked as Ex.R1. As stated supra, the second judgment debtor was already declared as insolvent. Therefore, the judgment cited by the learned counsel for the petitioner is squarely applicable to the present case on hand, since the deceased/first judgment debtor executed release deed in favour of his own brother and brother's wife and as such, it was executed only to defeat the interest of the

creditor and nothing else.

6. In this regard, it is relevant to extract the provision under Section 53 (1) of the Transfer of Property Act, 1882, as follows:-

*“53. **Fraudulent transfer** - (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.*

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term include a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.”

7. It is clear that every transfer of immovable property made with intent to defeat or delay the creditors of the transferor, shall be voidable. In the present transaction, after receipt of the notice from the Execution

Petition, the first judgment debtor executed the release deed in respect of the property, which was already attached by the trial Court.

G.K.ILANTHIRAIYAN,J.

Kv

8. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in E.P.No.46 of 2010 in O.S.No.136 of 2006 dated 03.04.2013 is set aside. No costs.

15.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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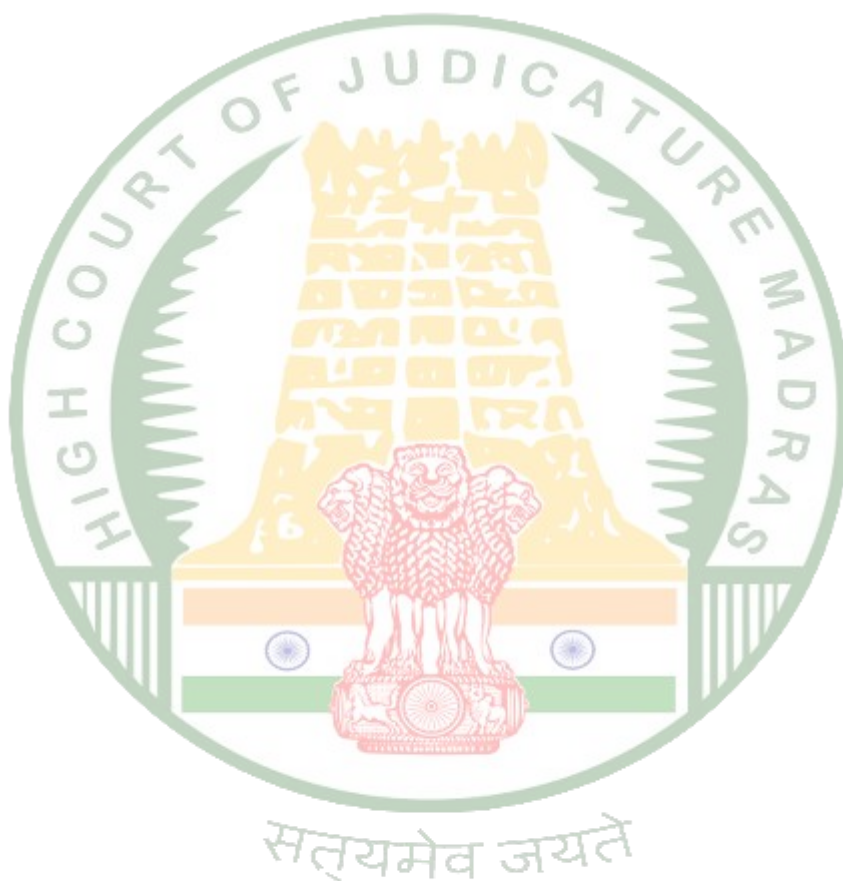
To

1. The District Munsif, Sathyamangalam.

2. The Section Officer,
V.R.Section, High Court of Madras.

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