

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                             |                          |
|-----------------------------|--------------------------|
| <b><i>Reserved on</i></b>   | <b><i>15.06.2021</i></b> |
| <b><i>Pronounced on</i></b> | <b><i>22.06.2021</i></b> |

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

**C.R.P.No.3704 of 2016**  
**and C.M.P.No.18784 of 2016**

V.Murugesan

.. Petitioner

Versus

1. S.H.Yusoof Nachiya

2. S.Sabiyammal

.. Respondents

**PRAYER:** The Civil Revision Petition is filed under Section 115 CPC, seeking to set aside the order, dated 2.12.2015 made in E.A.No.17 of 2012 in E.P.No.52 of 2011 in O.S.No.11 of 2011 on the file of the Subordinate Judge, Thiruvarur, Thiruvarur District.

For Petitioner : Mr.P.V.Selvarajan for  
Mr.R.Aranganathan

For Respondent : No appearance

**ORDER***(Heard through video conferencing)*

This Civil Revision Petition has been filed, seeking to set aside the order

dated 2.12.2015 passed in E.A.No.17 of 2012 in E.P.No.52 of 2011 in

O.S.No.11 of 2011 by the learned Subordinate Judge, Thiruvavur, Thiruvavur District, wherein and whereby, the petition filed by the respondents herein, under Order 21 Rule 58 CPC seeking to raise the attachment was allowed.

2. The petitioner herein is the plaintiff and the respondents 1 and 2 are the 3rd party/claimants and respondent No.3 is the defendant. A suit in O.S.No.11 of 2011 was filed by the petitioner/plaintiff for recovery of money based on a pronote executed by the 3rd respondent/defendant herein. When the 2nd respondent/defendant tried to alienate the property, the petitioner/plaintiff filed a petition to attach it before judgement. Subsequently the suit also decreed ex parte on 09.06.2011. Since the 3rd respondent/defendant failed to pay the decree amount, the petitioner/plaintiff filed an Execution Petition in E.P.No.52 of 2011 and brought the petition scheduled property for auction. During the pendency of the Execution Proceedings, the respondents 1 and 2 have filed a petition in E.A.17/2012 under Or.21. Rule 58 and claimed that they are the owners of the property.

### **3. The averments of petition in E.A.17/2012 in brief:-**

According to the respondents 1 and 2, the scheduled property was originally belonged to their mother, Mrs.Ayeesha Beevi and she has executed a registered

Settlement Deed dated 18.10.2010 in their favour. Earlier, the defendant/3rd respondent had fraudulently obtained a Settlement Deed from Mrs.Ayeesa Beevi by promising to maintain her but that was subsequently cancelled on 07.11.2008. Thereafter, this revision petitioner and the 3rd respondent/defendant colluded together and created a pronote and managed to get a decree in order to grab the property. Hence the respondents 1 and 2 have filed this claim petition.

**4. The brief averments of the counter filed by the revision petitioner:-**

The respondents 1 and 2/claimants and the 3rd respondent/defendant colluded between themselves and filed the application just to defeat the decree obtained by the petitioner. The settler Ayesha Beevi who settled the petition mentioned property in favour of the 3rd respondent/defendant cannot unilaterally cancel the same, since the 3rd respondent/defendant is the owner of the petition mentioned property. Hence the trial Court is right in ordering attachment of the said property.

**5. The submissions advanced by both the learned counsel were heard and perused the materials.**

6. It appears that the petitioner who is the plaintiff/decreed holder has got an order of attachment of the property before judgement. Subsequent to the decree he has also filed the execution petition to execute the decree by bringing the property for sale. It is not in dispute that the mother of the respondents 1 and 2/claimants, Ayesha Beevi has executed a settlement deed in favour of the 3<sup>rd</sup> respondent/defendant on 18.7.2008. The contention of the claimants is that Ayesha Beevi had executed the settlement deed in favour of the 3<sup>rd</sup> respondent/defendant pursuant to her assurance that she would maintain her. And that was cancelled by Ayesha Beevi, since the third respondent failed to maintain her.

7. After cancelling the settlement deed dated 18.07.2008 on 07.11.2008, Ayesha Beevi executed another settlement deed in favour of the respondents 1 and 2/claimants on 18.10.2010. The claimants claimed that by virtue of the second settlement deed dated 18.10.2010, they have taken possession of the property and they are enjoying the same as its owners.

8. The revision petitioner would contend that the earlier settlement deed which was executed in favour of the 3<sup>rd</sup> respondent/defendant on 18.07.2008 was a gift deed executed by Ayesha Beevi and that it has been acted upon. It is

further contended that Ayesha Beevi cannot unilaterally cancel the said settlement deed on her own and she has no right to execute another settlement deed in favour of the claimants on 18.10.2010.

9. The learned counsel for the respondents 1 and 2/claimants has submitted that as per the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, every transaction which is made for the purpose of maintenance and welfare of parents and senior citizen, shall be declared as void if such maintenance is not provided by the transferee and hence Ayesha Beevi has got the right to cancel the earlier settlement deed executed in favour of the 3<sup>rd</sup> respondent/defendant.

10. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has come into effect from 29.01.2007. As per Section 23(1) of the Act, if a senior citizen has transferred a gift to the other on the condition that the transferee should provide basic maintenance and if the transferee fails to maintain the senior citizen, the transaction itself can be declared as void by the Special Tribunal. For the purpose of convenience, the import of Section 23(1) is extracted as under:

***“23. Transfer of property to be void in certain circumstances.—(1) Where any senior citizen who, after the commencement of this Act, has transferred***

*by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.”*

According to the above said provision, in order to get any of the transfers made by the senior citizen declared as void on the ground of fraud or coercion, the senior citizen shall exercise the option of filing a petition before the Special Tribunal.

**11.** It is to be noted that the respondents 1 and 2/claimants did not produce any declaration order passed by the Special Tribunal though they pleaded that the transfer of the property made in favour of the 3<sup>rd</sup> respondent/defendant was due to fraud and coercion. It is contended by the respondents 1 and 2/claimants that the earlier settlement deed dated 18.07.2008 was not acted upon and the possession was not delivered to the 3<sup>rd</sup> respondent/defendant.

12. The learned Judge of the Executing Court has held that the cancellation of the settlement deed dated 18.07. 2008 is valid and the subsequent settlement deed in favour of the claimants has been acted upon. Unless a proceedings initiated at the instance of or on behalf of Ayesha Beevi before the Special Tribunal and the Tribunal passes an order that the settlement deed 18.7.2008 is void due to the reasons stated in the Special Act, it cannot be ascertained whether Ayisha Beevi has right to execute a settlement deed in favour of the claimants or whether the claimants have got the subsequent settlement deed from Ayesha Beevi on 18.10.2010 just in order to defraud the revision petitioner/Decree Holder by colluding with the 3<sup>rd</sup> respondent/defendant. Because the 3<sup>rd</sup> respondent/defendant is also granddaughter of Ayesha Beevi and whose mother is one of the daughters of Ayesha Beevi. Further, the terms of the earlier settlement deed dated 18.07.2008 are also matter of relevance in order to see whether the settlement deed executed by Ayesha Beevi in favour of the 3<sup>rd</sup> respondent/defendant was just for the consideration of getting maintained by the 3<sup>rd</sup> respondent/defendant. But the claimants did not produce even the certified copy of the settlement deed dated 18.07.2008 as well as the cancellation deed dated 07.11.2008, before the Executing Court. In the absence of these materials, the learned Judge of the Executing Court has held that the settlement deed executed in favour of the respondents 1 and 2/claimants dated

18.10.2010 is valid and it would supersede the earlier settlement deed dated 18.08.2008.

**13.** The learned Judge of the Executing Court has further observed that the petitioner/plaintiff has not produced any document to show that the settlement executed in favour of the 3<sup>rd</sup> respondent/defendant has been acted upon and hence the settlement in favour of the respondents 1 and 2/claimants is valid. Since the respondents 1 and 2/claimants only have alleged that the settlement deed executed in favour of the 3<sup>rd</sup> respondent/defendant has not been acted upon, the burden is on them to prove the same. Since the respondents 1 to 3 and the executant of the settlement deed, namely, Ayesha Beevi are all relatives, it is quite possible that they could have continued the possession of the property.

**14.** Whatever may be the case, Ayesha Beevi is always at liberty to approach the Special Tribunal if the settlement in favour of the 3<sup>rd</sup> respondent/defendant has been obtained by fraud or coercion. The Executing Court cannot usurp the jurisdiction of the Special Tribunal and come to a conclusion that the settlement deed in favour of the 3<sup>rd</sup> respondent/defendant is not voluntary and record a finding to that effect. Since the Executing Court has omitted to call for the relevant materials for proper appreciation of the facts, I feel that the matter

requires reconsideration and hence it has to be remitted back to the Executing Court in order to appreciate the issue afresh and pass appropriate orders.

**15.** In view of the above discussion, the order of the Executing Court passed in E.A.17 of 2012 is hereby set aside. And the matter is remitted back to the Executing Court for fresh consideration by calling all the relevant materials connected to the issue and pass appropriate orders. The parties also are at liberty to produce additional documents or adduce additional evidence with the leave of the Executing Court.

With the above directions, the Civil Revision Petition is disposed of. No costs. Connected miscellaneous petition is closed.

22.06.2021

Speaking/Non-speaking

Index: Yes/No

Suk

To

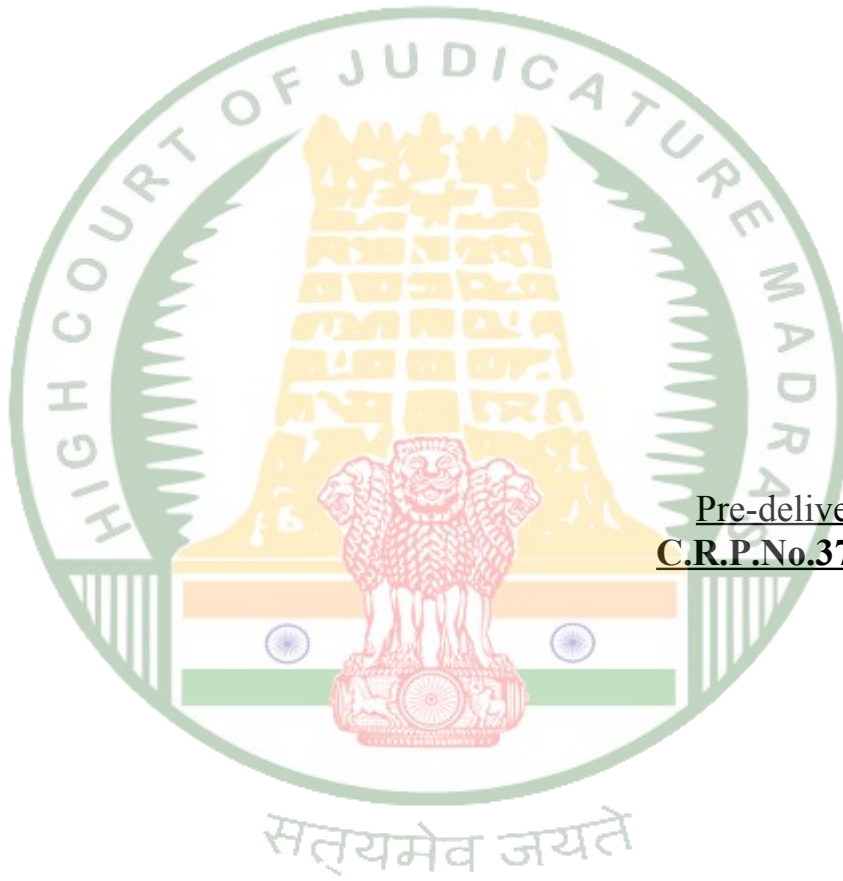
1.Subordinate Judge,

Thiruvapur, Thiruvapur District.

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

**R.N.MANJULA, J.**

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**Pre-delivery Order in**  
**C.R.P.No.3704 of 2016**

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**22.06.2021**