

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.1884 of 2020
and C.M.P. No.11343 of 2020

Ganesh Prasath

...

Petitioner /
Decree holder

versus

C.Sarvanan

...

Respondent /
Judgment Debtor

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, to call for the records relating to the order dated 02.06.2020 in E.P.No.12 of 2018 in O.S.No.19 of 2011 on the file of the Sub Court, Coonoor and set aside the same and allow the Civil Revision Petition.

For Petitioner : Mr.V.Ravi

For Respondent : Mr.K.Kannan
for Mr.M.Simon

ORDER

This Civil Revision Petition is filed to set aside the order passed in E.P.No.12 of 2018 in O.S.No.19 of 2011 on the file of the learned Sub Judge, Coonoor.

2. The learned counsel for the petitioner submitted that, the petitioner filed the suit in O.S.No.19 of 2011 against this respondent and one N.Mahalingam, seeking the relief of permanent injunction, restraining the defendants in the suit, their men, agents, servants or anybody claiming through them or in trust for them from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. This suit was filed on the basis that, the respondent herein is the owner of the suit property and he offered to sell the property to the petitioner for Rs.50,00,000/-. Accordingly, a Sale Agreement was entered into between the parties on 19.01.2011 and the petitioner paid a sum of Rs.40,00,000/- as an advance. Subsequently, the petitioner came to know

that, the respondent had entered into another Sale Agreement with N.Mahalingam, who is the first defendant in the suit on 29.03.2011. In pursuance of the Sale Agreement entered into between the petitioner and the respondent, the possession was handed over to the petitioner and he was in possession and enjoyment of the suit property. The petitioner and other defendants tried to forcibly interfere with the peaceful possession of the suit property and hence, he filed the aforesaid suit.

4. He further submitted that, during the pendency of the suit, there was a settlement entered into between the petitioner and the respondent. The matter was referred to Lok Adalat and settled in Lok Adalat on 20.08.2016. As per the terms of the settlement, the petitioner and the respondent filed a Joint Memo wherein the respondent offered to pay a sum of Rs.8,50,000/- to the petitioner, within a period of six months from 20.08.2016. The petitioner also agreed to receive the amount. Accordingly, the order was passed.

5. It is his further submission that, the respondent has not honoured the terms of the settlement arrived in the Lok Adalat and failed to pay the sum of Rs.8,50,000/-. Therefore, the petitioner filed E.P.No.32 of 2017 for attachment of the suit property and for sale towards realising the amount settled in the Lok Adalat. This Execution Petition was getting adjourned unnecessarily. Therefore, the petitioner filed C.R.P.(PD)No.2789 of 2019. This Court, after considering the terms of the settlement entered into between the parties directed the learned Subordinate Judge, Nilgiris, to dispose E.P.No.32 of 2017, within a period of three months from the date of receipt of a copy of the order. Then the matter was mentioned before the Court and it was submitted that E.P.No.32 of 2017 was transferred from Subordinate Court, Nilgiris to Subordinate Court, Coonoor and numbered as E.P.No.12 of 2018 and therefore, wanted necessary corrections in the order. Accordingly, it was directed to read that "*The Subordinate Judge, Coonoor at Udhagamandalam is hereby directed to expedite the execution petition in E.P.No.12 of 2018 and decide the same for completion of execution of Lok Adalat award dated 20.08.2016 made in O.S.No.19 of 2011 at the earliest,*

preferably within three months from the date of receipt of a copy of the order."

6. Then, the matter was taken up by the learned Subordinate Judge, Coonoor and the learned Subordinate Judge, Coonoor, dismissed the petition on the ground that, the suit property was transferred to P.Prema, mother of the respondent in 2011 itself. She is not a party and therefore, the Execution Petition is not maintainable in respect of the property brought for sale. On these reasons, the Execution Petition was dismissed. Against the dismissal of the Execution Petition, this Civil Revision Petition is preferred.

7. The learned counsel for the petitioner submitted that, the suit was filed in respect of the property sought to be attached and brought for sale, for the relief of permanent injunction against the defendants in the suit that, they should not interfere with the petitioner's peaceful possession and enjoyment of the suit property. Since the respondent has not honoured his commitment and undertaking given before the Lok Adalat for paying

Rs.8,50,000 for settling the dispute, the petitioner was forced to file the Execution Petition. This suit was filed on 07.04.2011. The Settlement Deed executed by the respondent in favour of his mother was executed only on 25.04.2011, that is, after filing of the suit. When settlement had taken place when the suit in O.S.No.19 of 2011 was pending, the transaction is hit by lis-pendence. Without considering these aspects, the learned Subordinate Judge Coonoor, has wrongly concluded that the settlement transaction, is not hit by lis-pendence and therefore, the property cannot be brought for sale. He prayed for setting aside the order of learned Subordinate Judge, Coonoor, and to proceed further in E.P.No.12 of 2018 for realising the amount awarded in the Lok Adalat.

8. In response, the learned counsel for the respondent submitted that, though there was a settlement between the parties in the Lok Adalat, it appears that there was some dispute between the parties and the amount was not paid. He submitted that, the property cannot be brought for sale for the reason that the respondent, is no more the owner of the property.

9. Considered the rival submissions and perused the records.

10. The reading of the order of the learned Subordinate Judge shows that, the Execution Petition was dismissed by the learned trial Judge on the ground that, the property mentioned in the Execution Petition was settled in the 2011 itself, in the name of respondent's mother viz. P.Prema through Document No. 711 of 2011 in the Sub Registrar Office, Coonoor. The said Premia, is not added as a party. The petitioner has not said anything about the Settlement Deed that, it was a fraudulent transaction. Therefore, the attachment ordered earlier, is not a valid attachment. It is also observed that, there is no mention in the Lok Adalat award about the petition mentioned property. So saying, the learned Subordinate Judge, dismissed the Execution Petition.

11. As narrated above, it is seen that, there is no dispute with regard to the fact that the respondent was the owner of the suit property when the suit was filed on 07.04.2011. Only after filing of the suit, he

executed a Settlement Deed in favour of his mother on 25.04.2011. Then, the matter was settled in the Lok Adalat on 20.08.2016. He agreed to pay Rs.8,50,000/- to the petitioner but failed to honour his commitment given before the Lok Adalat and the settlement reached in the Lok Adalat. This is nothing but cheating not only the petitioner, but the Court as well. The very concept of settlement reached in Lok Adalat is sought to be betrayed by the respondent. This Court has to necessarily come to the conclusion that only with a view to cheat the petitioner and with a forethought and premeditated plan, the respondent executed the Settlement Deed in respect of the suit property in favour of his mother, after filing the suit. Then he entered into a settlement in Lok Adalat. Merely because there is nothing said about the suit property in the Lok Adalat award, it does not mean that the transaction between the respondent and his mother in settling the suit property in favour of the mother after filing the suit will not hit by lis-pendence.

12. Admittedly, the property covered in the Settlement Deed is the suit property. Believing the words of the respondent, the petitioner had entered into the compromise and the matter was settled in Lok Adalat.

Therefore, finding of the learned Subordinate Judge, that the Settlement Deed executed by the respondent in favour of his mother on 25.04.2011 is not hit by lis-pendence is a wrong finding and that has to be necessarily set aside and is set aside. The petitioner is entitled to recover the amount settled in the Lok Adalat by bringing the suit property, which is also shown as property in the Execution Petition. Therefore, the order of the learned Subordinate Judge, is set aside and learned Subordinate Judge, Coonoor, is directed to restore the Execution Petition in E.P.No.12 of 2018 and proceed further towards realising the amount ordered in the Lok Adalat.

13. Before parting, this Court wants to record its dissatisfaction, the way in which this matter was handled by the learned Judge. The Courts are expected and mandated to ensure that Lok Adalat orders are enforced. It is highly disappointing to see that the learned Subordinate Judge, Coonoor has acted in a listless, lacklustre manner disregarding the very concept of Lok Adalat and dismissed the Execution Petition. If not Judges, who else would enforce Lok Adalat awards.

14. For the reasons aforesaid, this Civil Revision petition is allowed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

23.09.2021

Speaking order / Non-speaking order
Index : Yes

psa/sri

To

- 1.The Sub Court,
Coonoor.
- 2.The Sub Court,
Nilgiris.



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G.CHANDRASEKHARAN, J.

psa / sri



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