



C.R.P(PD)No.871 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.04.2022
Pronounced on	29.04.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.871 of 2015

Kolanji Udayar ... Petitioner

Vs.

1. Balasubramanian

2. Periyasamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the judgment and decree dated 16.10.2014 passed in C.M.A.No.36 of 2011 on the file of the III Additional District and Sessions Court, Cuddalore at Vridhachalam confirming the fair and decreetal order dated 31.01.2011 passed in I.A.No.1000 of 2008 in O.S.No.148 of 2008 before the Additional Sub Court, Vridhachalam.

For Petitioner : Mr.T.Sezhian
for Mrs.R.Meenal

For Respondent 1 : Mr.A.L.Ganthimathi

For Respondents 2 : No Appearance



ORDER

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This Civil Revision Petition No.871 of 2015 has been filed challenging the judgment and decree passed in C.M.A.No.36 of 2011 dated 16.10.2014 by the III Additional District and Sessions Court, Cuddalore at Vridhachalam, confirming the fair and decreetal order dated 31.01.2011 passed in I.A.No.1000 of 2008 in O.S.No.148 of 2008 before the Additional Sub Court, Vridhachalam.

2. The learned counsel for the petitioner submitted that the revision petitioner is the appellant and third party in C.M.A.No.36 of 2011 and filed an Interlocutory Application in I.A.No.1000 of 2008 in O.S.No.148 of 2008 to raise the attachment of the property and the same was dismissed by the Additional Sub Court, Vridhachalam on 31.01.2011, against which the revision petitioner/appellant/third party has filed a C.M.A.No.36 of 2011 under Order 43 Rule 1 of C.P.C.,

2.1. The petition mentioned properties are originally belonged to the second respondent viz., Periyasamy and his son Sivakumar and his paternal uncle Narayanasamy. The revision petitioner/appellant/third party has



executed a power of attorney on 11.09.2007 in favour of his wife

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Banumathi and she was authorized to purchase the properties on behalf of the revision petitioner/appellant/third party. The petition mentioned properties were sold by the above said three persons in favour of the revision petitioner/appellant/third party under registered sale deed document on 17.12.2007 for a sale consideration of sum of Rs.6,17,000/- and on the same day, the possession was handed over to the revision petitioner/appellant/third party.

2.2. The above said petition mentioned properties were sold by the three persons only for discharge of mortgage against one Subramanian dated 04.06.2001 for Rs.1,40,000/- and the revision petitioner/appellant/third party has given the same to them for discharging the loan. Further, the three persons received a debts of Rs.60,000/- to discharge the loan from Adari Palavan Bank and Rs.3,37,000/- for family expenses and for discharging the family debts. Therefore, the above mentioned three persons received a sum of Rs.6,17,000/- from the revision petitioner/appellant/third party. The revision petitioner/appellant/third party has been in possession of the petition



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mentioned properties from the date of purchase.

2.3. The revision petitioner/appellant/third party came to know that the first respondent/plaintiff has attached the properties on 23.10.2008 by mentioning the second respondent/defendant as owner of the petition mentioned properties.

3. The learned counsel appearing for the petitioner further submitted that the sale deed dated 17.12.2007 was executed only to discharge the loan taken by the second respondent/defendant and it is prior to the date of filing this suit and subsequently, the properties were attached on 23.10.2008.

4. The learned counsel for the petitioner placed his reliance on the judgment of the Hon'ble Supreme Court in the case of Vannarakkal Kallalathil Sreedharan Vs. Chandramaath Balakrishnan and Another, reported in 1990 3 SCC 291. For better appreciation, the relevant paragraphs of the judgment are extracted hereunder:



“7. Hence under a contract of sale entered into before attachment the conveyance after attachment in pursuance of the contract passes on good title in spite of the attachment. To the same effect are the decisions of the Bombay High Court in Rango Ramachandra Kulkarni Vs. Gurlingappa Chinnappa Muthal and Yehvant Shankar Dunakhe Vs. Pyaraji Nurji Tamboli. The High Court of Travancore-Cochin in Kochuponchi Varughese Vs. Ouseph Lonan has also adopted the same reasoning”.

“9. In our opinion, the view taken by the High Courts of Madras, Bombay, Calcutta and Travancore-Cochin in the aforesaid cases appears to be reasonable and could be accepted as correct. The agreement for sale indeed creates an obligation attached to the ownership of property and since the attaching creditor is entitled to attach only the right, title and interest of the judgment-debtor, the attachment cannot be free from the obligations incurred under the contract for sale. Section 64 CPC no doubt was intended to protect the attaching creditor, but if the subsequent conveyance is in pursuance of an agreement for sale which was before the attachment, the contractual obligation arising therefrom must be allowed to prevail over the rights of the attaching creditor. The rights of the attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of the attached property. The attaching creditor cannot ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the judgment-debtor. We cannot, therefore, agree with the view taken by the Punjab and Haryana High Court in Mohinder Singh case.



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5. The learned counsel for the first respondent submitted that the second respondent/defendant viz., Mr.Periyasamy executed a mortgage deed in favour of the first respondent Mr.Balasubramanian on 04.06.2001 and the revision petitioner/appellant/third party has suppressed the above matter and filed the petition by mentioning that the mortgage deed was executed in favour of one Mr.Subramaniyan. Further, the first respondent/plaintiff, before filing of the present suit, issued a legal notice to the revision petitioner/appellant/third party on 02.02.2008. The revision petitioner/appellant/third party and the second respondent/defendant are close relatives and in order to cheat the claim of the first respondent/plaintiff, the revision petitioner/appellant/third party and the second respondent/defendant had created the sale deed. Subsequently, the trial Court after considering the evidence and documents, dismissed the petition with cost on 31.01.2011.

6. The learned counsel further submitted that the suit in O.S.No.148 of 2008 has been decreed as early as on 02.12.2013. Hence, the Civil Revision Petition is not maintainable and the same is liable to be dismissed.



7. Heard the learned counsel for the petitioner and the learned counsel appearing for the first respondent and perused the material documents available on record.

8. The first respondent/plaintiff has filed the suit in O.S.No.148 of 2008 for recovery of money as against the second respondent/defendant viz., Mr.Periyasamy, based on the suit pro-note. The second respondent/defendant along with his son Sivakumar and his paternal uncle Mr.Narayanasamy, executed a sale deed dated 17.12.2007 for a sale consideration of Rs.6,17,000/-. However, prior to the execution of a sale deed, there was a mortgage deed dated 04.06.2001 registered against one Mr.Balasubramanian.

9. The petition mentioned properties were attached by the trial Court on 23.10.2008 and the revision petitioner/appellant/third party came to know that the first respondent/plaintiff viz., Mr.Balasubramanian has got the order of attachment by mentioning the second respondent/defendant viz., Mr.Periyasamy as the owner of the petition mentioned properties. Further,



the above mentioned mortgage deed dated 04.06.2001 was executed by the second respondent/defendant in favour of the first respondent/plaintiff but the same was suppressed and the revision petitioner/appellant/third party has filed an Interlocutory Application in I.A.No.1000 of 2008 in O.S.No.148 of 2008 stating that the mortgage deed was executed in favour of one Mr.Subramanian and not in favour of Mr.Balasubramanian. However, the first respondent/plaintiff has also issued a legal notice to the revision petitioner/appellant/third party as early as on 02.02.2008.

10. The trial Court after taking considering all the material evidence and documents, dismissed the I.A.No.1000 of 2008 with costs on 31.01.2011. Therefore, it is an admitted fact that the property was mortgage as early as on 04.06.2001 in favour of the first respondent/plaintiff viz., Mr.Balasubramaniyan and the sale deed was executed on 17.12.2007 and the suit in O.S.No.148 of 2008 was filed on 23.10.2008.

11. The revision petitioner is the third party in O.S.No.148 of 2008 and the petition mentioned properties were attached by the trial Court on 23.10.2008, against which, the revision petitioner/appellant/third party has



filed an Interlocutory Application under Order 21 Rule 58 of C.P.C., to raise the attachment. Subsequently, the trial Court has dismissed the application with costs on 31.01.2011. Further, the revision petitioner/appellant/third party has preferred a C.M.A.No.36 of 2011 under Order 43 Rule 1 of C.P.C., to set aside the fair and decreetal order passed in I.A.No.1000 of 2008 in O.S.No.148 of 2008. The second respondent/defendant Mr.Periyasamy has been remained exparte in the Civil Miscellaneous Appeal filed by the revision petitioner.

12. The P.W.1 also admits that the second respondent/defendant has executed a mortgage deed in favour of the first respondent/plaintiff on 04.06.2001. Hence, it is clear and evident that the mortgage deed was subsisting prior to the execution of the sale deed dated 17.12.2007 by the second respondent/defendant in favour of the revision petitioner/appellant/third party. Moreover, the evidence of P.W.1 has clearly shows that even prior to the execution of the sale deed, the revision petitioner/appellant/third party was aware of the mortgage deed in favour of the first respondent/plaintiff by the second respondent/defendant. As per Ex.R.1 there was a mortgage deed in favour of the first respondent/plaintiff



prior to the sale deed executed in favour of the revision petitioner/appellant/third party.

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13. In view of the statutory charge and as per Ex.R.1, the revision petitioner/appellant/third party is not entitled to the relief as prayed for and the Appellate Court after considering the material documents and evidences, has rightly dismissed the Civil Miscellaneous Appeal in C.M.A.No.36 of 2011.

14. It is pertinent to note that the above judgment of the Apex Court is not applicable to the case on hand for the reason that it is pertaining to a contract of sale, whereas in the present case it is related to a mortgage prior to the purchase.

15. In view of the above facts and circumstances of the case, this Court do not find any reason or ground to interfere with the judgment and decree passed in C.M.A.No.36 of 2011 dated 16.10.2014 on the file of the III



Additional District and Sessions Court, Cuddalore at Vridhachalam and the same is hereby confirmed. In the result, this Civil Revision Petition is dismissed. No costs, Consequently, connected M.P.No.1 of 2015 is closed.

29.04.2022

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Index : Yes/No

Speaking Order/Non-Speaking Order

To:

1. The III Additional District & Sessions Court,
Cuddalore at Vridhachalam.
2. Additional Sub Court,
Vridhachalam.



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C.R.P(PD)No.871 of 2017



J.SATHYA NARAYANA PRASAD,J.

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Pre Delivery Order in
C.R.P(PD)No.871 of 2015

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