



C.R.P (NPD) No.1224 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P (NPD) No.1224 of 2017

M.Nachimuthu

...Petitioner

..Vs..

1.Thulasiammal

2.Vasanthi

3.Vivek

4.Jagan Vikki

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of The Constitution of India, to set aside the fair and final order dated 26.10.2016 made in E.P.R.No.206 of 2015 in O.S.No.14 of 2008 on the file of the Court of I Additional Subordinate Judge, Erode.

For Petitioner : Mr.R.Prabakar

For R1 : Mr.D.Kanagasundaram

For R2 to R4 : Mr.S.Kaithamalai Kumaran



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ORDER

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This Civil Revision Petition has been filed by the Decree-Holder in O.S.No.14 of 2008 which was filed by the petitioner herein on the strength of a promissory note which he claimed had been executed by the defendant in the suit K.Kanagaraj for a sum of Rs.3 lakhs. It must be mentioned that K.Kanagaraj died during the pendency of the suit and the legal representatives/widow and daughter and sons had been brought on record as second-fifth defendants. They contested the suit.

2. The promissory note is dated 25.11.2005. The notice prior to institution of the suit was issued on 28.10.2007. The reply was issued on 03.11.2007. The suit was filed on 05.11.2008. In the interregnum period K.Kanagaraj appears to have settled the said property by a settlement deed to his own family members on 28.12.2007. That document was presented and registered on 13.01.2008. As stated during the pendency of the suit he died. The petitioner had also filed an application during the pendency of the suit seeking attachment before the judgment.

3. A written statement was filed by the legal representatives. The suit proceeded and finally it was decreed on 21.01.2013. The petitioner herein thereafter filed an Execution Petition No.206 of 2016. He sought attachment of the property which was already dealt with by the defendant



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Kanagaraj even prior to the institution of the suit and to bring the property for sale. The order passed in that particular E.P. on 26.10.2016 is now under challenge in the present revision petition.

4. The learned counsel for the revision petitioner Mr.R.Prabakar representing Mr.C.Pratap, pointed out that the transfer of the property before the institution of the suit, and the receipt of the pre-suit notice was fraudulent and therefore this Court should set aside such transfer and ensure that the property is brought in sale after due attachment for recovery of the money under the decree.

5. This position is strongly contested by the learned counsel for the respondents Mr.S.Kaithaimalai Kumaran who contended that even prior to the institution of the suit the property had been dealt with. In the reply to the pre-suit notice to the defendant, K.Kanagaraj had disclaimed knowledge of the promissory note, disclaimed knowledge of the petitioner herein and had disputed his signature in the promissory note.

6. However those facts cannot be today urged since a decree had been granted in favour of the revision petitioner. The only issue is the method in which the decree can be satisfied. The petitioner has taken a



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course to satisfy the said decree by bringing the property for sale. That had not found favour by the learned II Additional Sub Judge, Erode who dismissed the Execution Petition. But this is not the only method but which the petitioner can satisfy the decree. He can always file another Execution Petition taking recourse to any other provision under Order 21 C.P.C. It is a fact that even prior to the date of filing the suit the property had been transferred by Kanagaraj. Whether such transfer is fraudulent or not is an issue which goes beyond the scope of this Revision Petition.

7. The learned counsel for the petitioner placed reliance on the judgment of the reported in *(2010) 1 MLJ 556 [V.P.S.Viswanathan V.Sri Raja Yarns Traders, A Partnership Firm rep.by its Partner R.Rajasekaran]* wherein, a similar averment was made regarding transfer. A learned Single Judge held that a separate suit with respect to such fraudulent transfer is not required and that in the Execution Petition itself, such transfer can be examined by the Court. There is a small difference on facts. Here the transfer took place even prior to the institution of the suit.

8. Taking into consideration the provision of order 21 of the Code of Civil Procedure if not this property, any other property can be brought for sale for realization of the decree.



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9. It is to be noted that the petitioner has a decree in his hands and I would not interfere with the order passed. I once again reiterate the petitioner herein can still put to execution the decree in manner known to law.

10. In the result, this Civil Revision Petition is dismissed.

10.02.2022

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Speaking (or) Non Speaking Order
Internet : Yes

C.V.KARTHIKEYAN,J.,



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