



Rev.Appl.No.25 of 2022 &
C.R.P.No.1351 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Rev.Appl.No.25 of 2022
and
C.R.P.No.1351 of 2022
and
C.M.P.No.7123 of 2022

Rev.Appl.No.25 of 2022

1.C.Dhanalakshmi

2.Malathi

3.N.Udhayasankar

...Petitioners

-Vs-

1.K.Viswanathan

2.K.S.Subramaniam

...Respondents

Prayer: Review Application filed under Order 47 Rule 1 r/w 114 of Code of Civil Procedure, 1908, to review the judgment and decree dated 31.03.2021 passed in C.M.A.No.22 of 2021 on the file of this Court.



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For Petitioner : Mr.M.Nandha Kumar
for M/s.Eswar, Kumar and Rao

For Respondents : Mr.N.Manokaran

C.R.P.No.1351 of 2022

1.C.Dhanalakshmi

2.Malathi

3.N.Udhayasankar

...Petitioners

-Vs-

1.K.K.Seerangan

2.K.Viswanathan

3.K.S.Subramaniam

4.Garnishee

The 3rd Additional District Judge,
Gobichettipalayam.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to strike off the petition in E.P.No.44 of 2021 in O.S.No.44 of 2018 on the file of the III Additional District Judge, Erode at Gobichettipalayam.



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For Petitioner : Mr.M.Nandha Kumar
for M/s.Eswar, Kumar and Rao

For R1 to R3 : Mr.N.Manokaran
For R4 : No Appearance

COMMON ORDER

The facts in nutshell to be considered are that the respondents instituted a suit for specific performance and an alternate remedy is also sought to grant decree against the petitioners/defendants to refund the advance amount with interest at Rs.1,47,18,750/- and with subsequent interest at 9% on Rs.1,25,00,000/- from the date of the suit till the date of payment and create a statutory charge over the suit property as security for proper repayment of the decree amount.

2. An ex-parte decree was passed in O.S.No.44 of 2018 on 08.01.2020. The ex-parte decree reveals that the defendants entered appearance through their Counsel Mr.C.Devaraj on 18.08.2018 and the suit was posted for filing written statement. On 11.07.2019, the defendants 1 and 2 were called absent and the third defendant was present. Written



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statement was not filed and the defendants were set ex-parte. Upon hearing the plaintiffs' side and on perusal of the records, the suit was decreed with costs in respect of the relief of specific performance and a direction was issued to execute the Sale Deed in favour of the plaintiffs.

3. Subsequently, an Interlocutory Application in I.A.No.2 of 2020 was filed under Order 9 Rule 13 of the Code of Civil Procedure and under Section 151 of the Code of Civil Procedure and the Trial Court dismissed the said Interlocutory Application mainly on the ground that the plaintiffs and the defendants through their Counsel filed a Memo before the Trial Court on 02.11.2018, in which, it is found that the defendants agreed to settle the matter by way of returning the amount to the plaintiffs, for which the document No.2281/2016 has to be returned.

4. Based on the request made, the Trial Court permitted to return the said document, namely the Sale Agreement, on 02.11.2018. Another memo was filed before the Trial Court on 21.12.2018 by the learned Counsel for the plaintiffs, stating that till then, the defendants are not evincing any



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interest in executing the terms of compromise. Thus, the petition was resubmitted.

5. In contradiction to the above statements, the defendants in their written statement has denied the transaction by the plaintiffs with late Mr.P.C.Nagarajan. Even after the ex-parte decree on 20.01.2020, for remittance of Rs.35 lakhs, a challan was ordered on 21.01.2020. The amount was remitted and the remittance receipt was filed before the Trial Court on 28.01.2020. Under those circumstances, considering the contradictory stand taken by the defendants with reference to their admission of liability, the Trial Court dismissed the petition.

6. Though on the earlier occasion, the learned counsel appearing for the review petitioners taken a stand that no actual compromise was entered into between the parties, as per the documents, the respondents could able to establish that a Joint Memo was filed before the Trial Court, which was recorded. It was agreed between the parties to sell the subject property to a third party and settle the advance amount and such an agreement was also



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placed before the Trial Court.

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7. In short, the Joint Memo was signed between the plaintiffs and the defendants and even the respective learned counsel appearing on behalf of the parties were aware of the said factum. The said Joint Memo reveals that the suit was instituted for specific performance and for an alternate relief to refund the advance amount with interest.

8. During the pendency of the suit, a compromise was entered into between the parties to sell the subject property to a third person and settle the advance amount in favour of the plaintiffs. The sale date was also fixed as 07.11.2018. For the purpose of execution of the Sale Deed in favour of a third person, the document No.2281/2016 dated 26.07.2016, filed along with the plaint, is to be returned back to the plaintiffs, as per their request and the Court also passed an order and returned the document.

9. Apart from the Joint Memo filed by the plaintiffs and the defendants before the Trial Court, a written statement was also filed



subsequently. In the written statement, the defendants have categorically admitted their liability and the relevant paragraph-13 is extracted as under:-

"Pending suit, on 01.11.2018, both plaintiffs and the defendants entered into a panchayat and the defendants agreed to pay a sum of Rs.1,25,00,000/- (Rupees one crore and twenty five lakhs only) (as claimed by the said Seerangan and the plaintiff) to them and the suit property should be sold to third parties namely Venkatachalam, son of Marappagounder of Poosaripalayam, Sathyamangalam and discharge the above amount with interest at the rate of 9% per annum. An unregistered Sale Agreement receipt for Rs.20,00,000/- (Rupees twenty lakhs only) was executed on 05.03.2018 between third defendant and the aforesaid Mr.Venkatachalam, for the sale of suit property.?"

10. Considering the Memo filed by the parties, admitting the liability and to make arrangements to settle the advance amount along with interest as made for in the suit and further considering the admission categorically



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made by the defendants in their written statement, this Court also considered the entire facts and dismissed C.M.A.No.22 of 2021 filed by the defendants on 31.03.2021.

11. The defendants preferred Special Leave Petition before the Hon'ble Supreme Court, which was also dismissed. Thereafter, the plaintiffs in the suit filed an Execution Petition in E.P.No.44 of 2021. The execution proceedings was instituted by the third party as per the assignment made by the plaintiffs. The said execution proceedings initiated by the assignee was challenged before this Court in C.R.P.No.1351 of 2022. That apart, the Review Application No.25 of 2022 was also filed by the defendants to review the order passed in C.M.A.No.22 of 2021.

12. Considering the facts and circumstances, this Court is of the considered opinion that the subject property has already been assigned in favour of the third party by the plaintiffs based on the decree passed by the Trial Court. The Civil Miscellaneous Appeal filed by the defendants was dismissed and the further appeal to the Hon'ble Supreme Court was also



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rejected. Meanwhile, the plaintiffs had assigned the subject property in favour of the third party, who in turn filed an Execution Petition, which was also challenged by the defendants in C.R.P.No.1351 of 2022.

13. The main ground raised by the petitioners is that the assignment was done in favour of the third party without getting permission from the Trial Court under Order 21 Rule 16 of Code of Civil Procedure. In this regard, the learned counsel for the respondents relied on the judgment of the 3 Judges Bench of the Hon'ble Supreme Court in the case of ***Dhani Ram Gupta and others Vs. Lala Sri Ram and another reported in (1980) 2 SCC 162***, wherein the following observations are made:-

"We are unable to read Order 21, rule 16 as furnishing any foundation for the basic assumption of the learned counsel for the respondent that property in a decree does not pass to the transferee under the assignment until the transfer is recognised by the Court. Property in a decree must pass to the transferee under a deed of assignment when the parties to the deed of assignment intend such property



to pass. It does not depend on the Court's recognition of the transfer. Order 21, rule 16 neither expressly nor by implication provided that assignment of a decree does not take effect until recognised by the Court. It is true that while Order 21, rule 16 enables a transferee to apply for execution of the decree, the first proviso to Order 21, rule 16 enjoins that notice of such application shall be given to the transferor and the judgment-debtor and that the decree shall not be executed until the Court has heard their objections, if any, to its execution. It is one thing to say that the decree may not be executed by the transferor until the objections of the transferor and the judgment-debtor are heard, it is an altogether different thing to say that the assignment is of no consequence until the objections are heard and decided. The transfer as between the original decree-holder and the transferee is effected by the deed of assignment. If the judgment debtor has notice of the transfer, he cannot be permitted to defeat the rights of the transferee by entering into an adjustment with the transferor. If the judgment debtor has no notice of the transfer and enters into an adjustment with the transferor before



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the transferee serves him with notice under Order 21, rule 16, the judgment-debtor is protected. This in our view is no more than plain good sense. In Dwar Buksh Sirkar vs. Fatik Jali, the decree holder represented to the Court that the judgment debtor had satisfied the decree by payment and wanted his execution application to be disposed of accordingly. Before satisfaction could be recorded a transferee of the decree from the original decree-holder intervened and claimed that satisfaction could not be recorded as there was a valid transfer of the decree in his favour prior to the alleged payment by the judgment debtor to the original decree holder. The argument before the High Court was that the assignee could not prevent the recording of the satisfaction of the decree as he had not filed an execution application and got the assignment in his favour recognised. The High Court of Calcutta observed:

"The only provision in the Code referring expressly to the assignment of a decree is contained in Section 232, and that no doubt contemplates a case in which the assignee applies for execution. In such a case the Court may, if it thinks fit, after notice to the decree-holder and the judgment-debtor, allow the



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decree to be executed by the assignee. If, however, there is an assignment pending proceedings in execution taken by the decree-holder, I see nothing in the Code which debars the Code from recognising the transferee as the person to go on with the execution. The recognition of the Court is no doubt necessary before he can execute the decree, but it is the written assignment and not the recognition which makes him the transferee in law. The omission of the transferee, if it was an omission, to make a formal application for execution, was merely an error of procedure and does not affect the merits of the case. . It is argued for the respondent that the transferee's title was not complete as express notice of the transfer had not been given to the judgment-debtor. As already observed, the transfer, as between transferor and the transferee, is effected by the written assignment. If the judgment-debtor had no notice of the transfer and being otherwise unaware of it paid the money to the decree-holder, the payment was, of course, a good payment, and he cannot again be held liable to the transferee".

We express our agreement with the observations made by the Calcutta High Court."

14. The Hon'ble Supreme Court in the case of ***Vaishno Devi Construction Vs. Union of India reported in (2022) 2 SCC 290*** has reiterated the principles laid down by the Supreme Court on earlier



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occasions in paragraph 24 to 26, which reads as under:-

"24. On analysis of the submissions there is little doubt that the impugned judgments would have been completely in accordance with law if the amendments were not made in 1976 and would have been fully covered by the judgment in Jugalkishore Saraf. Thus, the only aspect which we have to consider is whether that amendment made any difference to the legal position as enunciated in the said judgment.

25. It is an admitted position that the explanation was added to Order 21 Rule 16 which did not exist earlier, pursuant to the recommendations made by the Law Commission of India in its 54th Report on the Civil Procedure Code, 1908. The Explanation was so added due to conflicting High Courts' decisions on the question, i.e., whether a person who does not have a written assignment of the decree, but who has succeeded to a decree holders' right, is entitled to such decree under Section 146 of the CPC.

26. In Ponniah Pillai v. T.Natarajan Asari, the



Madras High Court decided this question in the affirmative. The High Court gave liberty to the transferees to avail of Section 146 if they did not fall within the provisions of Order 21 Rule 16 CPC and, thus, would cover transferees of a property after the decree was passed. In this behalf the learned Judge disagreed with an earlier judgment of the Madras High Court in K.N.Sampath Mudaliar v. Sakunthala Ammal opining that Section 146 CPC could not have the effect of overriding Order 21 Rule 16 CPC. The Law Commission agreed with the view taken in the former judgment (which was delivered at a later point of time) and further noted that this view was supported by the High Courts of Andhra Pradesh, Patna and Kerala as well. Thus, the Law Commission recommended amending Order 21 Rule 16 to clarify that it does not affect the provisions of Section 146 and that a transferee of rights in the subject-matter of the suit can obtain execution of a decree without separate assignment of the decree. The objective appears to be to not have multifarious proceedings to determine the issue of assignment, but to determine the issue of assignment in the execution proceedings



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itself."

15. The rights of the plaintiffs in the present case have already been crystallized by way of a decree, against which, the defendants filed an application to set aside the same, which was dismissed by the Trial Court. Having aggrieved, the defendants filed Civil Miscellaneous Appeal before this Court and considering the facts and circumstances and also by considering the Joint Memo and the compromise arrived between the parties and further considering the admission of liability by the defendants before the Trial Court, the Civil Miscellaneous Appeal was dismissed by this Court, which was further confirmed by the Hon'ble Supreme Court. Thus, there is no question of obtaining further permission by the assignee. No such permission needs to be obtained, in view of the fact that the rights of the plaintiffs in respect of the scheduled property have already been confirmed by virtue of a decree and by applying the principles in this regard, the very ground raised by the petitioners deserves no merit consideration.

16. That apart, the petitioners in the present Review Application and



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Civil Revision Petition have all along obtained adjournments from this Court only on the ground that they have initiated steps to settle the matter. Even today, the learned counsel appearing for the petitioners made a submission that the petitioners are ready to pay a sum of Rs.50,00,000/- to the respondents and requested for further time. It is also brought to the notice of this Court that the petitioners are ready with a cheque for a sum of Rs.50,00,000/-. However, the very submission in this regard need not be considered by this Court, as a Compromise Memo was entered into between the parties even before the Trial Court and after entering into a compromise and after rejection of the petition, the petitioners have chosen to file petition after petition before the High Court and the Supreme Court and therefore, the said statement deserves no consideration from the hands of this Court. It is between the parties to settle the issues. Even now, the Court cannot wait for such settlement or prolong the litigation merely on the said ground.

17. Parties cannot make an attempt to settle partial amount for the purpose of getting adjournments and keep the matters pending for a long period. Courts cannot assist any such litigant in this regard. Once the parties



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have entered into an agreement before the Trial Court and the Trial Court has given ample opportunities to the parties to settle the issues, the parties have not availed such opportunities and in violation of their own submission and undertaking before the Trial Court, they have chosen to develop the litigation by approaching the High Court and Supreme Court and therefore, no further leniency is to be shown and any leniency shown would cause prejudice to either of the parties. Thus, this Court is of an opinion that the submission made in this regard is to be rejected.

18. In view of the fact that the petitioners in the Review Application and the Civil Revision Petition have not availed the opportunity to settle the issue as per their own undertaking and made an attempt to prolong and protract the issues by way of further litigations, they are not entitled for any further opportunity or leniency. Further, since the rights of the respondents in the present Review Application and the Civil Revision Petition have already been crystallized, there is no infirmity in respect of the assignment made by them, as no such prior permission is required under the Code of Civil Procedure, since the respondents/plaintiffs have got an absolute right to



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deal with the property, pursuant to the decree passed by the Courts, which
remains in force.

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S.M.SUBRAMANIAM, J.

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19. With the above findings, both the Review Application and the Civil Revision Petition stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2022

Index:Yes
Internet:Yes
Speaking order
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To

The III Additional District Judge,
Erode at Gobichettipalayam.

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