



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.09.2023**

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1563 of 2019
and C.M.P.No.10216 of 2019

Dr.Kapil Bharadwaj

... Petitioner

Vs

1.M/s.Sona Rice Industries,
Represented by its partner Shri Sachin,
S/o.Santlal Jhamtani,
Aged about 38 years, having registered office at
Gud Oil, Kamptee Taluk,
Nagpur District – 441 002,
Maharashtra.

2.M/s.Jai Matha Agro Industries,
Represented by its partner Ashok K.Bharadwaj,
Aged about 48 years,
Door No.575/5,
Subbaiya Mudaliar Street,
Coimbatore – 641 001.

3.Ashok K Bharadwaj

... Respondents

PRAYER:-Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to under Article 227 of the Constitution of India against

Page No: 1/9



fair and decreetal order dated 06.02.2019 passed in E.A.No.40 of 2016 in E.P.No.33 of 2016 by the learned V-Additional District Judge, Coimbatore.

For Petitioner : Mr.Syed Mustafa

For Respondents : Mr.C.Veeraraghavan for R1

Not ready in notice for R2 & R3

ORDER

The Settlee, the judgment debtor is the Revision Petitioner.

2. The settlor suffered a decree in Spl.C.S.No.645 of 2012 on 20.04.2014. This was on the file of the IV-Joint Civil Judge, Senior Division, Nagpur, State of Maharashtra. The said decree was transmitted to the file of the District Court in Coimbatore, pursuant to the order passed under Order XXI Rule 6 of C.P.C. dated 02.01.2015. On the receipt of the transmit decree, the V-Additional Judge, in Coimbatore, numbered the Execution Petition in E.P.R.No.218 of 2015 in E.P.No.I in Spl.C.S.No.645 of 2012.

Page No: 2/9



WEB COPY

3. At that stage, the Civil Revision Petitioner filed an application in E.A.No.40 of 2016 before the learned Principal District Judge, Coimbatore, stating that the attachment has to be raised by virtue of the fact that the property had been settled in his favour, even before the decree was passed on 17.11.2011. This was stoutly contested by the respondent stating that it is contrary to the provisions of Section 53 of the Transfer of Property Act. The case stood transferred to the file of the V-Additional District Judge, Coimbatore, who took up the matter for enquiry. The learned Judge, by an order dated 06.02.2019 dismissed the petition filed for raising of the attachment. Against which the present Civil Revision Petition has been filed.

4. I heard Mr.Mustafa, learned counsel for the petitioner and Mr.C.Veeraraghavan, learned counsel for the respondents.

5. I have to state that, though a Revision is not maintainable as against an order passed under Order XXI Rule 58 of C.P.C., since, an

Page No: 3/9



WEB COPY

appeal would also lie before this Court by way of Civil Miscellaneous Appeal, I heard the Revision finally, since, the matter has been pending from the year 2019.

6. Mr.Mustafa would argue that the date on which the decree has been obtained, the judgment debtor namely, Ashok K.Bharadwaj was not the owner of the property. He drew my attention to the settlement deed dated 17.11.2014 and would argue that as the son had become the owner of the property, for the decree passed against the father, the property cannot be attached.

7. Mr.Veera Raghavan would submit that the father had been delaying the proceedings for several years and it was in order to defraud the creditors that he had executed the document in favour of his son.

8. I have carefully considered the arguments on either side and have gone through the records.

Page No: 4/9



WEB COPY

9. As per Section 53(1) of the Transfer of Property Act, 1882, where there is a transfer of an immovable property in order to delay or defeat the creditors, the same shall be treated as voidable at the instances of the creditors. The only exception that the Rule contemplates is where the alienation is made in favour of a person in good faith and on payment of consideration. In the present case, a perusal of the settlement deed shows that a document had been executed by the judgment debtor in favour of the Civil Revision Petitioner out of natural love and affection. Therefore, the petitioner does not come within the proviso of Section 53(1) of the Transfer of Property Act. The Trial Court had rightly come to the conclusion that the Settlement Deed, dated 17.11.2011 was transferred in favour of the Civil Revision Petitioner only in order to escape from the decree that had been passed against him. The respondent before me is the decree holder who has decided to exercise the option of treating the

Page No: 5/9



WEB COPY

transfer as void insofar as he is concerned and has proceeded with the execution. Consequently, Section 53 of Transfer of Property Act, 1882 applies. I do not find any merits in the case. I should further add that neither the judgment debtor nor the claimant attempted to enter the witness box for the purpose of substantiating their case. They have proceeded only on the basis of the Settlement Deed and the Settlement Deed was also not for consideration but has been executed gratuitously. The petitioner being a person who has obtained the property gratuitously is answerable to the decree passed against the donor.

10. I do not find any illegality or irregularity in the order passed by the trial Court, dated 06.02.2019 passed in E.A.No.40 of 2016 in E.P.No.33 of 2016. Hence, the Civil Revision Petition is dismissed.

11. At this stage, Mr.Mustafa would submit that pursuant to the order of this Court, he had paid the decree amount of Rs.7,07,263.25. Therefore, while executing the decree, the Courts below should take into

Page No: 6/9



WEB COPY

consideration the amount paid by the claimant in discharge of the decree amount.

12. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

gba

Index: Yes/ No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

To

The Additional District Judge-V,
Coimbatore.

Page No: 7/9



WEB COPY



V. LAKSHMINARAYANAN,J.

Gba

C.R.P.No.1563 of 2019
and C.M.P.No.10216 of 2019

Page No: 8/9



WEB COPY



27.09.2023

Page No: 9/9