



C.R.P. No. 518 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.518 of 2017

V.Mathimugam

... Petitioner

Vs

1.KuilBaby Ammal

Arumugam (Died)

2. Subramaniam

Ganesan (Died)

3. Ramalingam

4.Thamayanthi

5.Sundari

6.Malarvizhi

7.Sumathi

Anjali (Died)

8. Balamanikandan

9. Sathiya

... Respondents

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PRAYER : Civil Revision Petition filed Under Article 226 of the Constitution of India, praying to set aside the decreetal order dated 12.01.2017 in EA.No.277 of 2010 in O.S.No.261 of 1991, on the file of the Principal District Munsif, Cuddalore.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.N.Suresh

ORDER

Challenging the order passed in E.A.277 of 2010 on the file of the Principal District Munsif, Cuddalore, in the application under Order 21 Rule 16 and Section 151 of CPC to recognize the petitioner as an assignee of the decree passed in A.S.No.204 of 1993 in O.S.No.261 of 1991, this Civil Revision petition is filed.

2. According to the revision petitioner / assignee, one Kuil Baby Ammal filed a suit against the defendants for recovery of possession and mense profits. Contending that the defendants are the legal heirs of the Arumugam Padayatchi and are enjoying the property as tenants, they failed



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to pay the rent, so he filed a suit for recovery of possession. Initially, the suit was dismissed, against which appeal was preferred in A.S.No.204 of 1993 and the same was remanded. Finally, the appeal in A.S.No.204 of 1993 was allowed, and accordingly, suit was decreed in favour of the plaintiff Kuil Baby Ammal. The said plaintiff bequeathed the property in favour of her brother Narayanan on 07.05.1996. After her death, in the year of 2006, the said Narayanan became the legal heir of the plaintiff and he assigned the decree in favour of the petitioner on 01.06.2010, by obtaining the consideration of Rs.3,60,000/-. Based on the said assignment of the decree, this petitioner filed an application under Order 21 Rule 16 of CPC to recognize as "Made over plaintiff" in the execution application in E.A.No.277 of 2010 in O.S.No.261 of 1991.

3. On hearing both sides, the Executing Court has dismissed the application holding that the petitioner not being the decree holder as per the provisions of Order 21 Rule 16 of CPC and the assignment of the decree also not been registered under Section 17(1)(e) of the Indian Registration Act, besides not registering of the document which is also invalid



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document. Accordingly, the petition was dismissed. Challenging that, the assignee of the "made over decree" has preferred this revision.

4. The learned counsel for the revision petitioner argues that the Court below erroneously arrived at a conclusion that the said document requires registration because as per the case of the petitioner is that, he has been already the owner of the property and the document of assignee is only confirmation of his pre-existing legal rights and without such appreciation, the trial Court dismissed the petition as such is totally mis-conception of law and liable to be set aside. Further, he also argues that the assignment of decree [Ex.P.1] does not require registration as per Section 17(2)(vi) of the Registration Act and without looking into the nature of the document, the learned trial Judge has erroneously arrived at a conclusion that the document has to be compulsorily registered under Section 17(1)(e) of the Act. To support his contention, he relied the following authorities:-

" in *Periakatha Nadar v Mahalingam alias Katteri & Ors.* AIR 1936 Mad 543 observed that there is no formal



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requirement in law under Order 21 Rule 16. On the issue of validity of assignment of decree, the Court held as follows:

"The absence of a formal assignment in the sense of a document which in form purports to assign the decree by the Court acting on behalf of all the parties to the suit to the purchaser is not, in our opinion, required by law. No particular form of assignment is prescribed in the case of decrees either under Order 21 Rule 16 or by any other provision of law. Anything in writing which transfers a decree and clearly shows that the intention was to assign the decree is sufficient. The assignment in this case must be deemed to have been made by the Court acting on behalf of all the partners who were entitled to the decree and for whose benefit the decree was obtained by the receiver."

.....

J. In (Adivi) Krishnayya v (Thummalapally) Sriramulu & Ors.***AIR 1928 Mad 142***, the Division Bench of the Madras High Court held that the assignment of a personal decree against one defendant did not require registration, though in the same decree there was also a mortgage decree against another defendant. Following this dictum, the Kerala High Court in ***Asanisa Rowther and Ors. vs. Raman Pillai 1961 KLJ 1102***, observed that the decree does not come within the scope of Section 17(1)(e) of the Indian Registration Act and



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therefore the transfer of this decree does not require registration.

5. Per contra, the learned counsel for the respondent/assignee/plaintiff submits that the alleged assignment of decree was said to have been executed by one Narayanan on 01.06.2010, and this petitioner, as such, obtained the property by consideration and in order to grab the property that belongs to the original plaintiff Kuyil Baby Ammal. Moreover, this petitioner has already fraudulently obtained a sale deed from one Saraswathi Ammal, who had purchase the same from one Deivakannu Padayatchi, being the concubine son of Manicka Padayatchi (father of D1-Arumugam). But, neither the Deivakannu Padayatchi nor Saraswathi Ammal took possession and enjoyment of the property at any point of time. Saraswathi Ammal sold in favour of the petitioner Mathimugan who purchased the property on 16.12.2009 during the pendency of the suit proceedings, thereafter, attempted to cause interference in the petition mentioned property. A complaint was lodged before Pullam Police Station by the defendants 1 to 6, and thereafter, the said Mathimugan, who is an advocate



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by profession, forcibly obtained assignment of decree from Narayanan who was the beneficiary of the property, based upon a Will said to have been executed by Kuyil Baby Ammal. After obtaining the assignment of the "Made over decree", he filed an application in order to initiate execution proceedings as such based upon the unregistered invalid decree and the same was rightly dismissed by the Executing Court, which needs no interference, accordingly, he prays to dismiss the petition being devoid of merits.

6. Considering both sides submissions and on a perusal of the records, the petitioner/ Mathimugam as an Advocate by profession, based on the assignment of "Made over decree", he wanted to implead himself as a decree holder, and filed application under Order 21 Rule 16 of CPC to recognise him as a "Made over plaintiff" in the execution petition.

7. Admittedly, one Kuyil Baby Ammal filed the suit for recovery of possession against the defendants 1 to 4, Arumugam and his sons. In fact, the said property originally belongs to the husband of Kuyil Baby Ammal,



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namely Sivaraman Chettiar and family. He has no issues and after demise of his wife / plaintiff, her brother Narayanan claimed himself as a relative of the plaintiff and she executed Will in his favour on 07.05.1996. Based on the Will said to have been executed by Kuyil Baby Ammal, he claimed right over the property.

8. As per the contention of the petitioner, the said Narayanan was assigned decree in favour of the petitioner on 01.06.2010. Admittedly, the said assignment of decree is an un registered one. But, relying the two authorities, the learned counsel for the petitioner submits that already the Mathimugan/ petitioner purchased the property from Saraswathi Ammal, So the pre-existing right alone was confirmed by the assignment of decree. Therefore, it does not require any registration.

9. The following Points are to be considered:-

- (i) Whether unregistered assignment is permissible under law.
- (ii) Whether Registration under Section 17(1) is mandatory.
- (iii) Whether the petitioner can file an application by including Order



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21. Rule 6 of CPC to recognise him as an assignor of decree holder / plaintiff. Now, Section 17(1)(e) of Registration Act, reads as follows:

"(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act 1866 (XX of 1866), or the Indian Registration Act, 1871 or the Indian Registration Act 1877 or this Act came or comes into force viz:

(e) Non testamentary instruments transferring or assigning any decree or order of a Court or any Award where, such decree or order or Award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of Rs.100/- or upward to or in immovable property."

10. The above provision of law is very clear assigning any decree, declare any right, title or interest, of the value of Rs.100/- or upwards, to or in immovable property, requires registration. But the contention of the petitioner is that already he purchased property from one Saraswathi



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Ammal and so his pre-existing right alone is to be confirmed, therefore assignment of decree needs no registration.

11. On a perusal of the affidavit filed by the petitioner before the Executing Court, he has not stated that already he purchased the property from one Saraswathy Ammal, and supressing the fact he filed an affidavit before the Court. It clearly reveals that he has approached the Court with unclean hands, moreover he is an advocate by profession and having close proximity with the heirs of the concubine being the rival parties of the 1st defendant. Moreover, as per the appeal decree, plaintiff Kuyil Baby Ammal / Sivaraman Chettiar are the owners of the property and till date, the decree is in force. The title of the tenant, namely Arumugam and legal heirs are not declared as original owners of the suit property. Therefore, the alleged purchase made by the petitioner and one Saraswathy Ammal as such are not acceptable one, nor the plaintiff of this case for the reason that the title is not proved till date. Therefore, the contention of the petitioner is that pre-existing right based on a sale deed executed by said Saraswathy Ammal as such is not acceptable one, and to that effect the authorities relied on by the



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petitioner are also not supporting the case of the petitioner.

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12. Therefore, on a bare perusal of the alleged assignment in respect of the property, said to have been assigned in favour of the petitioner as such, requires compulsory registration under Section 17(1)(e) of the Registration Act and the same was rightly appreciated by the Executing Court which needs no interference.

13. Furthermore, as per Section 17 of the Registration Act and by any provision of property Act, which speaks about the non-registration of the documents, requires to be registered under Section 17(1)(e). Furthermore, Section 49 of the Indian Registration Act reads as follows:

"49. No document required by Section 17 or by any provision of Transfer of Property Act 1882 (IV of 1882) to be registered shall (a) affect any immovable property comprised therein or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Provided that an unregistered document affecting



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immovable property and required by this Act or the Transfer of Property Act, 1882 (iV of 1882) to be registered may be received as evidence of contract in a suit for specific performance under Chapter II of the Specific Relief Act 1877 (I of 1877) or as evidence any collateral transactions not required to be effected by registered instrument."

14. It clearly shows that unregistered assignment deed cannot be relied on if the same is not registered and unstamped. Therefore, the findings of the trial Judge to that effect needs no interference.

15. Furthermore, the revision petitioner filed a petition under Order 21 Rule 16 of CPC to permit him to proceed with the executing proceedings as a "Made over plaintiff" based upon the said assignment, but Order 21 Rule 16 of CPC speaks as follows:

"Order 21 Rule 16 CPC: where a decree or if a decree has been passed jointly in favour of two or more persons, the interest of any decree holder is transferred by assignment in writing or by operation of law the transferee



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may apply for execution of decree to the Court which passed it and the decree may be executed in the same manner and subject to the same conditions as if the application were made by the such decree holder. "

16. The above provision of law clearly indicates that the interest of any decree holder can be transferred by assignment in writing. But in the present case, the petitioner is a third party and not a decree holder. Hence, he is not entitled to file an application under Order 21 Rule 16 CPC or by operation of law. The petitioner may apply for execution of the decree, but as discussed above, the alleged purchase is also not valid under law as, he is not entitled to proceed to execute the decree and to that effect, the order of the learned trial Judge needs no interference.

17. Therefore, as an advocate by profession, the petitioner approached the Court with unclean hands and suppressed the fact that he filed application knowing fully well that the affidavit should contain all the correct particulars and so the conduct of the petitioner as such, clearly indicates that he wants to grab the property on that ground alone this



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petition is liable to be dismissed. Though the said Narayanan claimed right over the property based on the Will, but he contended that the petitioner obtained assignment decree in force, and by undue influence and the same need not be considered for the reason that the burden is on the petitioner who bound to prove, but he failed. However, there is finding that Will is not disputed by the defendants, but the person who claims right over the Will and the petitioner who approached the Court based on the said Will, also are bound to prove the same. Therefore, the reason assigned by the learned trial Judge needs no interference and the Revision Petition is dismissed as devoid on merits. No costs.

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Index : Yes/No

Internet: Yes/No

Speaking/Non Speaking order

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To

The Principal District Munsif, Cuddalore.

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T.V.THAMILSELVI, J.

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