IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28..11..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Revision Petition No.632 of 2023
and
C.M.P.No.4988 of 2023

Mrs.M.Malathi

..... Petitioner

-Versus-

1.Mr.Chinnadurai
2.Mr.Baskaran

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 08.12.2022 passed by the Subordinate Judge, Jayankondam in E.A.No.143 of 2018 in E.P.No.3 of 2017 in O.S.No.102 of 2004.

For Petitioner : *Mr.R.Venkatesulu*

For Respondent(s) : *Mr.M.Guruprasad for R1*
No Appearance for R2

ORDER

This civil revision petition has been filed challenging the order dated 08.12.2022 passed by the learned Subordinate Judge, Jayankondam, dismissing the application in E.A.No.143 of 2018 in E.P.No.03 of 2017 in O.S.No.102 of 2004 filed by the revision petitioner/third party under Section 151 of CPC.

2. The facts leading to the filing of the revision petition in brief are as follows: (i) The application in E.A.No.143 of 2018 was filed under Section 151 of CPC by the civil revision petitioner, who is the wife of the 2nd respondent/judgement-debtor and a third party to the suit proceedings, seeking to exclude the properties (1) S.No.293/1C4 – 68 cents and (2) 293/2C – 19 cents situated at Thirukkalappur Village, Udayarpalayam Taluk from the execution proceedings.

(ii) In the said application, the civil revision petitioner pleaded that as far as the properties comprised S.No.293/1C4– 68 cents and 293/2C – 19 centssituated at Thirukkalappur Village, were originally settled in favour of her son on 11.06.1983 by her husband, the 2nd respondent/Judgement-Debtor. In that settlement deed, according to the revision petitioner, she was given life interest and vested interest was created in favour of her then-minor son. She has been in possession and enjoyment of the above said properties. While so, subsequent to the execution of the settlement, an agreement was said to have been entered by the 2nd respondent on 04.08.2003 to sell the properties comprised in S.F.No.293/1C4 – 68 cents, S.F.No.293/2C – 19 cents, S.F.No.294/19D – 23 cents, S.F.No.303/1B – 6 cents, S.F.No.30314B – 53 cents, S.F.No.303/20A – 30 cents and S.F.No.318/6A – 31 cents. Based on that agreement, a suit was filed by the 1st respondent which was numbered as O.S.No.102 of 2004. The said suit was decreed on 14.07.2006 after contest. No appeal was preferred by the defendants as against that decree and judgement. Thereafter, an Execution Petition was filed to enforce the decree. Pending such execution petition, earlier, the revision petitioner moved the executing court with an execution application under Section 151 of CPC seeking to exclude the properties covered under the settlement deed executed by her husband, the 2nd respondent herein, which was numbered as E.A.No.35 of 2008.

(iii) According to the revision petitioner, as the earlier application in E.A.No.35 of 2008 was filed inadvertently under Section 151 of CPC, she had to file another application under Section 47 of CPC for proper adjudication which was subsequently numbered as E.A.No.2 of 2012. The earlier application was supposed to have been dismissed, but was not done and the same was pending. However, on 08.09.2006, the application in E.A.No.35 of 2008 as well as the application in E.A.No.2 of 2012 were dismissed for the default of the petitioner. Thereafter, it is seen from the records that the revision petitioner filed an application on 22.09.2016 to restore the application in E.A.No.35 of 2008 and by allowing that application, E.A.No.35 of 2008 came to be restored to its file and on transfer, it was numbered as E.A.No.143 of 2018.

(iv) The execution application in E.A.No.143 of 2018 was filed alleging that when the 2nd respondent had already executed a settlement deed executed on 04.06.2003 granting life interest to the petitioner and vested remainder to her minor son, he ought not have entered into an agreement to sell the properties covered under the settlement deed. Therefore, she sought to exclude the properties covered under the settlement deed. The said application was dismissed by the executing court. Challenging the order of the executing court, the present revision petition.

3. The only contention of the revision petitioner before this court is that the lands comprised in S.No.293/1C4 - 27.5 cents and S.No.293/2C - 7.5 cents were already settled in her son's favour while giving life interest to her. When the life interest has already been given in her favour, the settlor (2nd respondent) had no right to execute an agreement of sale on behalf of the minor

to sell the properties which were already settled by way of a registered settlement deed.Therefore, the suit for specific performance of the contract ought not to have been decreed by the trial court.

4. Heard Mr.R.Venkatesulu, learned counsel for the revision petitioner and Mr.M.Guruprasad, learned counsel for the 1st respondent.

5. The learned counsel for the revision petitioner would strenuously submit that as per the provision in Section 17 of the Specific Relief Act, 1963, when a person enters a contract in respect of a property over which he does not have title, such contract cannot be enforced. Further, according to him, as per the provision in Section 6 of the Transfer of Property Act, 1882, if the interest of a person in the property is restricted in its enjoyment, such limited interest cannot transform into absolute ownership.

6. The learned counsel for the revision petitioner would further submit that the very contract itself is void and as such, it is unenforceable under Section 23 of the Indian Contract Act, 1872. The executing court has failed to take into consideration all these facts and dismissed the application and hence, he prayed for allowing the revision.

7. Per contra, the learned counsel appearing for the 1st respondent/decree-

holder would submit that the settlement said to have been executed by the 2nd respondent/judgement-debtor and relied upon by the revision petitioner had not been proved in the manner known to law before the executing court. No attesting witnesses were examined. That apart, under the settlement, only life interest was given to the revision petitioner and vested remainder infavour of the then minor son. Whereas the agreement to sell the properties was entered into by the 2nd respondent on behalf of his then-minor son as guardian and the then minor son was also made as a party defendant to the suit and he was represented by his father and natural guardian, the 2nd respondent. The then minor who was the 2nd defendant in the suit had not chosen to avoid the contract. The said suit was decreed after contest and no appeal having been filed against that decree, it has become final. Therefore, based on the settlement deed said to have been executed by the 2nd respondent, her husband, the revision petitioner cannot maintain an application for exclusion the properties, which are subject matter in the settlement deed, from the execution proceedings.

8. The learned counsel for the 1st respondent would further contend that the similar application filed by the petitioner was dismissed earlier. The executing court has taken note of the fact that it was successive application.

Therefore, the learned counsel prayed for the dismissal of the suit.

9. This court has considered the rival submissions carefully.

10. In the light of the above, the point that arises for consideration is:

Whether the life interest holder could claim absolute right in the immovable property?

11. It is not in dispute that suit in O.S.No.102 of 2004 was filed for the enforcement of the contract of agreement of sale dated 04.08.2003 against the 2nd respondent and his son, the then minor Manuneedhi Cholan and the same was decreed as prayed for, after contest, by judgement and decree dated 14.07.2006. No appeal having been filed against the said decree, it has become final. Further, admittedly, the 2nd defendant in the suit, who was then minor and was aged 12 years, had not at all chosen to avoid the contract immediately within three years of his attaining majority as prescribed under the law of limitation.

12. It is the case of the revision petitioner that, after the execution of the settlement deed on 16.06.1983, the 2nd respondent himself entered into an agreement on behalf of minor son on 04.08.1983 to sell his properties including

the properties covered under the settlement deed and therefore, the agreement of sale is not valid in the eye of law.

13. This court has gone through the entire agreement of sale carefully. The said agreement of sale was executed on behalf of his then-minor son as guardian of the then minor. Rightly both the father and the then minor son were made as party defendants in the suit for specific performance and the suit was decided on merits and decreed by judgement dated 14.07.2006. No appeal having been filed against the same, the decree had become final. Though the revision petitioner claimed that there is a settlement in her favour granting life interest, the executing court has found that the settlement was not proved in the manner known to law.

14. Be that as it may, a copy of the settlement when carefully perused, it could be seen that only a life interest was given to the revision petitioner and the vested interest has been created in favour of the then minor son of the revision petitioner.

15. As far as life interest is concerned, only possession of the property can be postponed and not the vested interest created under the document. In this regard it would be useful to refer to a judgement of the Division Bench of this Court in the case of **P.Ram Mohan v. Lalitha Raghuraman,** AIR 1976 Mad

333. In para 12 of the judgement, it has been held as follows:

> "12. In a recent judgment rendered by oath of us on 29th November, 1974 in *Somasundaram* v. *Rajammal*[*], A.S. 522 of 1970 summary of the judgement reported in 1975 T.N.L.J. 9 - we have held that there cannot be a vacuum or interregnum where there is a life estate followed by an absolute estate, because the residue must rest somewhere and that what is deferred is only the possession of the properties in favour of the settlees and not the vesting of interest. In other words, only the possession of the properties would be postponed but not the vested interest created under the document. In the instant case, Ram Mohan and Raghuraman had both acquired a vested interest in the properties immediately on the date of execution of Ex. A-1, but only their right to possession of the properties had been postponed by the intervention of the life estates."

16. In para 13 of the very same judgement referred to above, the Division Bench of this Court has held as under:-

> "**13.** In *Bhagabati Barmani* v. *Kalicharan Singh,* 38 Cal. 468, a Hindu testator left a will, giving possession of the properties, movable and immovable,

to his wife and mother for their lives and on their death to the sons of his sisters who were in existence and also those who might be born, thereafter, who should hold the properties in equal shares. The testator died the day following the execution of the will. It was held that the will gave the sons of the sisters a vested interest in their respective shares at the testator's death, though it postponed their possession and enjoyment until the deaths of the mother and widow. In *Bilaso* v. *Munnilal and others, 33 All 558; Phillip Graham Greenwood* v. *Phillip Graham Greenwood, AIR 1989 PC 78; Hazara Singh* v. *Banta Singh, AIR 1960 Punj. 257; Sree Chand Sowcar* v. *Kast Chetti, AIR 1933 Mad 885;* and *Somasundaram* v. *Rajammal, 89 LW 151*, (decided by us—A.S. 522 of 1970), a similar view about the nature of vested interests has been taken. All the above cases related to wills. In *Krishna Aiyar* v. *Saminatha lyer, 8 LW 140*, a Bench of this court, has adopted the principle laid down in *Bhagabati Barmani* v. *Kalicharan Singh*, to a case, arising under S. 19 of the T.P. Act. That shows that the same principle would be applicable to settlements also. Therefore, we hold that Raghuraman had acquired a vested interest in the properties on the date of Ex. A-1, and left a half-share to be inherited by his heirs on his death."

17. In the light of the above legal position, even assuming that the

settlement deed executed in favour of the revision petitioner has been proved as valid in the eye of law, what was given to her was only limited to enjoyment, whereas the vested interest has already been created in favour of her then-minor son, who was the 2nd defendant in the suit. It is also not in dispute that the vested interest was created by settlement by the father in favour of his only son and the male legal heir. However, an agreement of sale was entered into by the 2nd respondent/1st judgement-debtor subsequently on behalf of his then-minor son, the 2nd defendant in the suit to sell the property, and based on that agreement, a suit came to be filed against both the father and the then-minor son, which came to be decreed on 14.07.2006. The son of the petitioner, who has a vested interest in the properties in question, had not chosen to avoid the contract within three years of the limitation period on his attaining the majority, and no appeal having been filed, the decree against them had become final.

18. In such view of the matter, now, the revision petitioner, who has got only life interest in the properties, cannot contend that the properties that are the subject matter of the settlement deed have to be excluded from the execution proceedings. Though the argument of the learned counsel for the revision petitioner that the contract is void ab initio and the same cannot be enforced under the law appears to be attractive, such an argument cannot be countenanced because the contract was entered by the father on behalf of the

then-minor son in the capacity of natural guardian. Although the agreement of sale seems to have been entered by the natural guardian without the prior permission of the court under Section 8 of the Hindu Minority and Guardianship Act, it is only voidable. In this case, the son of the petitioner had not chosen to avoid the contract entered by his father within a period of three years on his attaining the majority. Therefore, it has to be necessarily held that such contract was ratified by the then minor on his attaining majority. Therefore, the contention of the learned counsel for the revision petitioner that the contract entered by the 2nd respondent/1st defendant with the 1st respondent/plaintiff is void under Section 23 of the Indian Contract Act, has no leg to stand on.

19. Regarding the claim that the life interest cannot be sold in accordance with Section 6 of the Transfer of Property Act, it should be noted that Section 6 only forbids an interest in property that is personally restricted to

the owner's enjoyment; the owner is not permitted to transfer it. In the instant case, no life interest was reserved by the owner for himself. Therefore, Section 6 of the Transfer of Property Act also cannot be applied mechanically to the facts of the case.

20. Coming to the contention of the learned counsel for the revision petitioner that as per Section 17 of the Specific Relief Act, 1963 that person who have no title to a property, cannot enter into a contract and if any such contract is entered, such contract cannot been enforced, it is relevant to note that natural guardian and the father of the then minor has entered a contract to sell the properties and the minor was also made as eo-nominee party and he was also a party defendant in the suit. Thus, Section 17 of the Specific Relief Act, 1963 is also not applicable to the facts of the case.

21. Considering the above factual and legal aspects of the case, this court is of the view that the revision petitioner cannot seek the deletion of the properties that are said to be subject matter of the settlement. At the most, the delivery of possession of the property alone could be postponed till the lifetime of the revision petitioner. This is the legal position, and there may be an order passed only for a symbolic possession as far as the properties in S.No.293/1C4 – 68 cents and S.No.293/2C – 19 cents and the actual delivery of such

properties could be effected only after the lifetime of the revision petitioner.

22. In the light of the discussions made above, this court does not find any illegality in the order of the court below and therefore, the revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed, however, with the above observations. No costs. Consequently, connected CMP is closed.

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Index : yes / no
Neutral Citation : yes / no

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To
1.The Subordinate Judge, Jayankondam, Ariyalur District.

N.SATHISH KUMAR.J.,

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C.R.P.No.632 of 2023

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