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CRP.No.3587 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.3587 of 2023
and CMP.No.22464 of 2023

1.Meena

2.N.Praveen Kumar

3.R.Hari Gowtham

...

Petitioners

/vs/

M/s.Ojas Finanace,

Represented by its partner

V.Duraibalan

...

Respondent

PRAYER : This civil revision petition has been filed under Section 115 of the Code of Civil Procedure to set aside the fair and final order of the learned 2nd Additional Subordinate Judge, Coimbatore made in E.A.No.5 of 2022 in E.P.No.931 of 2016 in O.S.No.45 of 1994 dated 24.07.2023.

For Petitioners

...

Mr.M.R.Thangavel

For Respondent

...

Mr.S.Karthikai Balan

ORDER

This civil revision petition has been filed to set aside the fair and final order of the learned 2nd Additional Subordinate Judge, Coimbatore made in E.A.No.5 of 2022 in E.P.No. 931 of 2016 in O.S.No.45 of 1994 dated 24.07.2023.



2.The learned counsel appearing for the petitioners submitted that the petitioners are respondents 2 to 4 in E.P.No.931 of 2016 in O.S.No.45 of 1994. They are wife and sons of the deceased N.Ramasamy/Judgment debtor in O.S.No.45 of 1994. The respondent Partnership firm, who is the decree holder, filed the suit in O.S.No.45 of 1994 with the following prayer:

(i).directing the defendant to execute the sale deed free of encumbrance after receiving the balance sale price of Rs.50,000/- on or before a date to be fixed by this Hon'ble Court and in the event of his failure to execute the sale deed, this Hon'ble Court may kindly execute the sale deed on behalf of the defendant and put the plaintiff in possession of the suit property and other reliefs.

The petitioners came to know that the respondent partnership firm was not registered as per the Provisions of the Indian Partnership Act. Therefore, the present proceedings against the petitioners is barred under Section 69(2) of the Indian Partnership Act, since the suit itself does not maintainable under law, consequently, all the subsequent proceedings including the EP proceedings are not maintainable. Therefore, the petitioners filed obstruction petition in E.A.No.5 of 2022 in E.P.No.931 of



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2016 in O.S.No.45 of 1994. The learned trial Judge, without considering the fact of non registration of partnership firm, dismissed the same. Hence, it is under challenge.

3.The learned counsel for the petitioners further contended that the Partnership Amendment Act included Rule 3(A) of the Tamil Nadu Partnership (Registration of Firms) Rules 1932, which mandates every registered firm to file declaration in form II with the Registrar of Firms, after its registration under Section 59 of 1932. In this case, admittedly as per the document marked by the petitioners at the time of enquiry, the respondent not filed any form. This fact is not disputed by the respondent. Under these circumstances, the E.P. proceedings is not maintainable. To support of his argument, the learned counsel for the petitioner relied on the judgments in ***(i).Salem Chit Funds and financiers Association represented by its Secretary S.Dhandayutham Vs. Sate of Tamil Nadu represented by the Secretary, Commercial Taxes and Religious Endowment Department, Fort St.George Madras 9*** reported in ***1999 (1) CTC 373***, ***(ii). Sunderlal & Sons Vs. Yagendra Nath Singh & Anr.***



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Reported in *1976 SCC OnLine Cal 28*, and (iii). In *India Meters Ltd., (Now amalgamated as Samrakshana Electricals Ltd., Rep. By its Authorised Signatory Mr.Shivakumar Vs. Press Equipments and Products Company, Rep.by its Managing Partner in CRP.NPD.No.2878 of 2015.*

4.The learned counsel appearing for the respondent would contend that at the time of institution of the suit and at the time of passing decree, the partnership firm was registered one. There is no material to show that the registration has been cancelled and no statutory provision is required registration periodically renewed every year. Further, while passing the decree, the partnership firm being a registered firm, it is not hit by Section 69 of the Indian Partnership Act and EP Court has no power to go behind the decree, it cannot question to challenge the validity of the decree. Further, under Section 47 validity of the decree cannot be questioned, it would be relating to the execution, discharge or satisfaction of the decree alone.



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5. Further, to support of his argument to the effect of 69 of Partnership Act, the learned counsel would contend that it is only for the purpose of institution of the suit and not for any other purpose. To support of his argument, the learned counsel relied on the judgment in ***Jalal Mohammed Ibrahim (died) and ors. Vs. Kakka Mohammed Ghouse Sahib and anr.*** reported in ***AIR 1972 MAD 86***, the decision of the Delhi High Court in ***Rahul Jain & Anr. Vs. Shri Pradeep Kumar & Ors. in I.A.No.3947 of 2004 in CS (OS).No.512 of 2004*** and also in ***V.K.S.Transport, represented by its Managing Partner K.Ashok Kumar Vs. Senior Regional Manager, Tamil Nadu Civil Supplies Corporation, Government of Tamil Nadu (Undertaking) and another*** reported in ***(2016) 8 MLJ 618***.

6. I have considered the matter in the light of the submissions made by the learned counsel on either side and perused the materials available on record.



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7. The revision petition has been filed challenging the order passed in E.A.No.5 of 2022 in E.P.No.931 of 2016 in O.S.No.45 of 1994 on the file of the 2nd Additional Subordinate Court, Coimbatore. E.P. has been filed in pursuance of the decree dated 14.09.1994 passed in O.S.No.45 of 1994. In the EP, the petitioners filed E.A.No.5 of 2022 challenging the execution on the ground that partnership firm is not a registered one that decree is nullity. On fact, it is not disputed that at the time of institution of the suit and passing of decree, the partnership firm was a registered one. As on date, the registration is not cancelled. Therefore, the decree is a valid decree and not hit by Section 69 of the Partnership Firm Act. Further, the decree passed in a suit instituted by an unregistered firm is not a nullity. The disability created by Section 69 of the Partnership Act is with regard to the right to institute a suit and not with regard to the power of the Court to pass a decree. This principles settled by the Hon'ble Supreme Court in ***Jalal Mohammed Ibrahim (Died) and Ors. Vs. Kakka Mohammed Ghouse Sahib and anr.*** reported in ***AIR 1972 MAD 86***. But in this case, at the time of passing of decree, the partnership firm is a registered one.



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Therefore, an argument placed by the learned counsel for the petitioner is not acceptable one.

8.The Executing Court is required to execute a decree as made and it has no jurisdiction to widening its scope or add to it unless a specific question is raised relating to discharge as satisfaction of the decree as envisaged under Section 47 CPC. Further, an Executing Court cannot go behind the decree nor it can question its legality or correctness. In this case, while the decree was passed, partnership firm is registered one. Under these circumstances, the Executing Court cannot entertain objection with regard to the nullity of the decree and refuse to execute the decree. Therefore, the decree is being a warrant, the Executing Court cannot go behind the decree, it has to be executed. Further, Section 47 is concerned about discharge or satisfaction of the decree not with regard to the validity of the decree. Therefore, the Executing Court rightly dismissed the petition and I find no infirmity in the matter and there is no ground to interfere with and I find no merit in the civil revision petition.



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9. In the result, the civil revision petition is dismissed with the direction to the Executing Court to proceed with the execution petition in E.P.No.931 of 2016 and dispose it within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
sms

22.02.2024

To

The II Additional Subordinate Court,
Coimbatore.



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