

G. Janobai and Others Vs. V.M. Devadoss

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Court : Chennai

Decided On : Jun-14-2016

Judge : M. Duraiswamy

Appeal No. : CRP.(NPD)No. 1104 of 2016 & C.M.P.No. 6079 of 2016

Appellant : G. Janobai and Others

Respondent : V.M. Devadoss

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 1.8.2015 in E.A.No.7 of 2014 in E.P.No.69 of 2013 in O.S.No.222 of 2004 on the file of II Additional District Judge, Poonamallee.)

1. Challenging the fair and final order passed in E.A.No.7 of 2014 in E.P.No.69 of 2013 in O.S.No.222 of 2004 on the file of II Additional District Court, Poonamallee, the judgment debtors have filed the above Civil Revision Petition.
2. The plaintiff filed the suit in in O.S.No.222 of 2004 for specific performance.
3. After contest, the suit was decreed by the Trial Court on 21.08.2007.
4. As against the judgment and decree passed by the Trial Court, the defendants preferred an appeal in A.S.No.1114 of 2007 before this court and the Division

Bench of this court, by its judgment and decree dated 07.03.2012, confirmed the judgment and decree passed by the Trial Court and dismissed the appeal.

5. Aggrieved over the same, the defendants preferred an appeal before the Hon'ble Supreme Court of India in S.L.P.(Civil) No.15460 of 2013 and the Hon'ble Apex Court also dismissed the Special Leave Petition on 01.07.2013. Thereafter, the respondent-plaintiff filed an Execution Petition in E.P.No.69 of 2013 before the II Additional District Court, Poonamallee under Order 21, Rule 11 of Civil Procedure Code. In the said Execution Petition, the defendants-judgment debtors filed an application in E.A.No.7 of 2014 under section 47 of the Civil Procedure Code to dismiss the Execution Petition in E.P.No.69 of 2013 as the decree being unenforceable.

6. The judgment debtors contended that after the execution of the suit sale agreement dated 2.9.1996, they executed two sale deeds, viz., one sale deed dated 16.9.1998 conveying an extent of 47 cents out of the total extent of 10.83 acres of the suit property in favour of one C.M.Parthasarathy and another sale dated 16.9.1998 conveying another extent of 47 cents out of the total extent of 10.83 acres of the suit property in favour of one P.Damodharan. It was contended by the judgment debtors that these two sale transactions have not so far been specifically set aside in any valid legal proceedings and in the absence of such cancellation, the decree holder is not entitled to compel them to execute the sale deed conveying the entire extent of 10.83 acres in his favour in the execution of the decree for specific performance obtained by him. Further, the judgment debtors contended that these two sale deeds are reflected in the Encumbrance Certificate in respect of the suit property and no steps have been taken in this regard by the decree holder to delete them so far.

7. The decree holder in his counter has stated that the judgment debtors have filed the suit in O.S.No.326 of 2002 on the file of Subordinate Court, Poonamallee to declare four sale deeds dated 27.12.1999 executed by the respondent-decree holder as Power of Attorney Agent of (i) C.M.Parthasarathy, (ii) P.Damodharan, (iii) M.N.Sundararaman and (iv) M.S.Sathyanarayanan executed in favour of one N.Baskar and A.S.Sridhar as sham and nominal and does not pass title to them.

Further, in the said suit, the judgment debtors prayed to declare that the sale deeds executed by the decree holder and others in favour of the Commissioner Kunrathur Panchayat Union are not binding upon them. The said suit was decreed in favour of the petitioners declaring that the sale deed are not binding on the judgment debtors. Further, the decree holder has stated that the sale deeds dated 16.9.1998 are not binding on the judgment debtors and they are also sham and nominal documents.

8. On a perusal of the plaint filed in O.S.No.326 of 2002, it could be seen that the judgment debtors have stated in paragraph No.5 that the property agreed to be sold is 10.83 acres and further having regard to the fact that the alienation of such a large extent of vacant land is illegal and invalid under the then prevailing Tamil Nadu Urban and Land (Ceiling and Regulation) Act, 1978, the decree holder herein, in order to purchase the property, without legal hurdles, employed various devious methods and entered into acts of subterfuge. Further, the judgment debtor has stated that the decree holder entered into a sale agreement with them on 2.9.1996 in and by which, the decree holder agreed to purchase the suit property mentioned in O.S.No.222 of 2004. In these circumstances, the decree holder prayed for dismissal of E.A.No.7 of 2014.

9. Before the Execution Court, on the side of the judgment debtors, P.W.1 was examined and 11 documents, Exs.P1 to P11 were marked. The two sale deeds dated 16.9.1998 executed in favour of P.Damodharan and C.M.Parthasarathy were marked as Exs.P1 and P2.

10. Mr.T.Viswanatha Rao, learned counsel appearing for the petitioners, in support of his contentions, relied upon the following judgments:-

(i) AIR 1956 S.C.87 [Merla Ramanna v. Nalaparaju and others] wherein, the Hon'ble Supreme Court held that when a sale in execution of a decree is impugned on the ground that it is not warranted by the terms thereof, that question could be agitated, when it arises between parties to the decree, only by a application under section 47 and not in a separate suit.

(ii) 1994(1) L.W.49 [Desh Bandhu Gupta v. N.L.Anand and Rajinder Singh] wherein, the Hon'ble Supreme Court held that pre-sale illegalities committed in the execution are amenable to remedy under section 47, while post-sale illegalities or irregularities would be covered under Order 21, Rule 90 of Civil Procedure Code.

(iii) XIV L.W. 92 [Jainuladbin v. Krishna Chettiar] wherein, a Division Bench of this court held that to make section 47 of the Civil Procedure Code applicable, two conditions are necessary to be fulfilled, viz.,

(1) the question raised must be one relating to the execution, discharge or satisfaction of a decree; and

(2) it must also be one arising between the parties ;to the ;suit or their representatives.

A question relating to over-delivery in the execution of a decree is a question to the execution, discharge or satisfaction of a decree. Further, the Division Bench held that mistakes in execution proceedings should be rectified by the Executing Court itself and Section 47 of Civil Procedure Code should receive a wide construction so that parties may not be driven to suits for the purpose.

(iv) 1968 MLJ 472 [Marudanayagam Pillai v. P.K.Venkaaswami Naidu and others] wherein, this court held that if the decree holder takes in execution land not included in the decree or in excess of the decree, the judgment debtor must apply under section 47 of Civil Procedure Code for recovery of such land and a separate suit for that purpose will not lie.

(v) AIR 2006 Bombay 203 [Uday Pundalik Nadkarni and Anr. v. Amarnath N.S.Talwadkar] wherein, the Bombay High Court held that rejection of objection by totally non-speaking order merely on the ground that objections are merit less is not proper and that the reasonings in that regard should precede said findings.

11. Countering the submissions made by the learned counsel appearing for the petitioners, Mr.R.Bharath Kumar, learned counsel appearing for the respondent, submitted that the Execution Court, taking into consideration the case of both sides, rightly dismissed the application, which does not warrant interference. In

support of his contentions, the learned counsel, relied upon the following judgment:-

(i) 2008 (8) MLJ 1095 [Padmavathi v. Kaveriammal] wherein, the Hon'ble Supreme Court held as follows:-

7. Section 47 of C.P.C postulates that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. It is an opportunity to executability of the decree. If the petitioner having allowed the orders to become final, it would not be open to him to raise contention thereafter. It is well settled that the executing Court cannot go behind the decree or step out from its powers, unless it is shown that it is passed by a court having inherent lack of jurisdiction which will make it a nullity. Want of jurisdiction must be apparent.

(ii) 1991(2) MLJ 325 [A.V.Hanifa v. Salima Dhanu] wherein this court held as follows:-

9. Learned counsel for the petitioner submits that u/S.47(1), Civil P.C. all questions arising between the parties to the suit in which a decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Learned counsel wants me to interpret this Section as meaning that any question which is raised by a party to the suit should be considered by the executing Court if it relates to execution, discharge or satisfaction of the decree. Such a wide interpretation is unsustainable. When the section refers to all questions it only means all questions which were not raised in the suit and decided by the trial court. If a question was raised before the trial court at the stage of trial and decided by the trial court it is not open to the parties to raise it again at the stage of execution. Similarly, if a question ought to have been raised by a party before the trial Court at the stage of trial and if he omits to raise it, even then he cannot raise it u/S.47 before the executing Court.

12. On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and the judgments relied upon by the learned counsel on either side, it could be seen that the suit in O.S.No.222 of 2004 was filed by the respondent for specific performance in respect of an agreement of sale deed dated 2.9.1996 by which, the judgment debtor agreed to sell the suit property measuring an extent of 10.83 acres to the respondent-decree holder.

13. In the section 47 application, the judgment debtors contended that they have sold an extent of 47 cents out of the total extent of 10.83 acres on 16.9.1998 to one C.M.Parthasarathy under Ex.P2 and another extent of 47 cents out of the total extent of 10.83 acres to one P.Damodharan under Ex.P1 sale deed dated 16.9.1998 and therefore, the decree holder is not entitled to get the sale deed in respect of the total extent of 94 cents sold to the purchasers under two sale deeds dated 16.9.1998 marked as Exs.P1 and P2. On a perusal of the written statement filed by the judgment debtors in O.S.No.222 of 2004, it is clear that they have not raised this point in the written statement.

14. The Trial Court, taking into consideration the oral and documentary evidences, decreed the suit in O.S.No.222 of 2004. Against which, the judgment debtors preferred an appeal before this court in A.S.No.1114 of 2007 and this court also confirmed the judgment and decree passed by the Trial Court and dismissed the appeal. Even before this court, the revision petitioners-judgment debtors did not raise an issue with regard to the decree granted by the Trial Court in respect of the entire extent of 10.83 acres. When the judgment judgment debtors contend that they have sold an extent of 94 cents in the year 1998 itself, they could have raised the said issue either before the trial Court or before this court in the first appeal or before the Hon'ble Supreme Court in the Special Leave Petition. The judgment and decree of this court was also confirmed by the Hon'ble Supreme Court in S.L.P.(C)No.15 460 of 2013 by its order dated 1.7.2013.

15. Having kept silent for more than a decade, in the year 2014, the judgment debtors filed the present application in E.A.No.7 of 2014 under section 47 of CPC. For the first time, in the entire proceedings, which reached finality on 1.7.2013

before the Hon'ble Supreme Court of India, the judgment debtors have taken a new plea in section 47 application stating that the decree holders cannot get a sale deed in respect of 94 cents, which they sold under Exs.P1 and P2 sale deeds.

16. It cannot be disputed that under section 47 of the Civil Procedure Code, the Executing Court can determine all questions arising between the parties, in which decree was passed and relating to the execution, discharge or satisfaction of the decree and not by a separate suit.

17. In the case on hand, though the judgment debtors had executed two sale deeds on 16.9.1998, for the reasons best known to them they did not disclose this in their written statement filed in O.S.No.222 of 2004. It is pertinent to note that the two sale deeds were executed subsequent to the execution of the suit agreement dated 2.9.1996. In the plaint filed by the judgment debtors in O.S.No.326 of 2002, the judgment debtors have stated that the power of attorney deeds executed by them were created for the purpose of circumventing ceiling law and the said documents are sham and nominal and never intended to be acted upon and in fact never acted upon. Further, they have stated that the power of attorney deed could not be legally enforceable and enforceable transaction as the respondent-decree holder had already taken agreement of sale from them as early as on 2.9.1996.

18. From the above, it is clear that the documents executed by the judgment debtors subsequent to the execution of the sale agreement dated 2.9.1996 in favour of the respondent-decree holder are sham and nominal document, never intended to be acted upon and created for the purpose of circumventing the ceiling law.

19. The statement made by the judgment debtors in the plaint filed by them in O.S.No.326 of 2002 coupled with the non-mentioning of the sale made by them under Exs.P1 and P2 sale deeds dated 16.9.1998 would only establish that they ignored the said sale deeds for the reason that they were also created for the purpose of circumventing ceiling law and are sham and nominal documents.

20. After loosing the case before the Trial Court, before this Court and also before the Hon'ble Supreme Court of India, when the respondent-decree holder filed

Execution Petition to get the decree executed, at that stage, the judgment debtors have come forward with the present application under section 47 of the Civil Procedure Code stating that the respondent-decree holder cannot get a sale deed in respect of 94 cents, which was sold by them under Exs.P1 and P2 sale deeds. The conduct of the parties would establish that their aim is to prevent the respondent-decree holder from executing the decree. The judgment debtors have not given any acceptable reason for not raising this plea at the earliest point of time. The decree granted by the Trial Court was confirmed by this court as well as by the Hon'ble Apex Court.

21. Though there is no dispute with regard to the ratios laid down in the judgments relied upon by the learned counsel for the petitioners, since the facts and circumstances are different, the said judgments are not applicable to the present case.

22. In the judgment reported in 1991(2) MLJ 325 (cited supra) this court clearly held that if a question ought to have been raised by a party before the Trial Court, at the stage of trial and if he omits to raise it, even then, he cannot raise it under section 47 of the Civil Procedure Code before the Executing Court. The ratio laid down in this judgment squarely applies to the facts and circumstances of the present case.

23. The question with regard to the sale made by the judgment debtors under Exs.P1 and P2 sale deeds ought to have been raised by them before the Trial Court at the stage of trial and for the reasons best known to them they omitted to raise it. Therefore, they cannot raise the said contention under section 47 of the Civil Procedure Code. The judgment debtors having allowed the decree to become final, it would not be open to them to raise such contention under section 47 of the Civil Procedure Code.

24. In the case on hand, the suit was decreed for specific performance for an extent of 10.83 acres. The said decree has become final, after the dismissal of the Special Leave Petition by the Hon'ble Supreme Court of India. Therefore, when the decree has become final that cannot be modified now under section 47 of the Civil Procedure Code, when the said plea was not raised either before the Trial

Court or before the Appellate Courts. In these circumstances, the Execution Court has rightly dismissed the application.

25. In view of the above, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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