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(2009) 10 MAD CK 0156

Madras High Court

Case No: C.R.P. (NPD) . No. 2827 of 2009 and M.P. No. 1 of 2009

Manickam	APPELLANT
Vs	
Nirmala Devi and Sengoda Gounder (deceased)	RESPONDENT

Date of Decision: Oct. 27, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 3, Order 21 Rule 32
- Evidence Act, 1872 - Section 43, 73

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: Gandhi for R.G. Narendhran, for the Appellant; A.K. Kumarasamy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.
The petitioner/first respondent/judgment debtor has filed this civi revision petition as against the order dated 21.7.2009 in E.P. No. 81 of 2007 in O.S. No. 700/1996 and the consequential auction notice dated 25.8.2009 passed by the learned Principal District Munsif, Erode.

2. The Executing Court, while passing orders in E.P. No. 81 of 2007, has, inter alia, come to the conclusion that the plea of the revision petitioner/husband/judgment debtor that he has paid a sum of Rs. 25,000/- as lifetime maintenance to the respondent/wife/decree holder has not been proved and rejected the said plea and further ordered for settlement of proclamation in order to determine the value of the execution petition mentioned properties and posted the matter to 04.08.2009.

3. The learned Counsel for the revision petitioner/ husband submits that the Executing Court has committed an error in not considering Ex.R.1 one time settlement receipt in a proper and real perspective when R.W.2 and R.W.3 have categorically deposed that the respondent/wife has received a sum of Rs. 25,000/- towards one time settlement for which she has issued a receipt on 25.08.2002 and thereby a substantial injustice has been caused to the revision petitioner and as a matter of fact, R.W.2 and R.W.3 have spoken about the genuineness of Ex.R.1 without any ambiguity and added further, the respondent/decree holder has remained silent for well over 8 years after the closure of the second execution petition viz., E.P. No. 39 of 2000 on 21.03.2000 and the present E.P. No. 81 of 2007 has been filed only to grab ransom under the guise of maintenance and in Ex.R.1 the first witness is none other than the father of the respondent/decree holder and he has refused to receive the Court summons and indeed, the claim in the present execution petition is only Rs. 1,15,500/- but the total market value of the schedule properties in the execution petition is about Rs. 40 lakhs and therefore, there is nexus or proximity or any valid reason in bringing the entire properties for auction sale and therefore, prays for allowing the civil revision petition.

4. It is the specific contention of the learned Counsel for the revision petitioner that the Executing Court has compared the signature of the respondent/decree holder in Ex.R.1 receipt with that of the signature seen in the execution petition filed by the respondent/decree holder and has come to the conclusion that there is a market difference in regard to the two signatures and when Ex.R.1 receipt is very much denied on the side of the respondent/ decree holder to the effect that she has not executed the same then the revision petitioner/husband has not taken any steps to send the signatures for comparison to be made by a Forensic Science Department/Expert and in law, a Court of law should not itself compare the disputed signatures without assistance of any expert and in this regard, in the present case the comparison done by the Executing Court is against the tenor of the decision of Honourable Supreme Court in O. Bharatan Vs. K. Sudhakaran and another, wherein it is held that "Court should not itself compare the disputed signatures without assistance of any expert when the signatures with which the disputed signatures are to be compared are themselves not the admitted signatures."

5. He also cites the decision of this Court in Ammani Ammal v. 1. Dhanalakshmi Bank Limited, Tiruppur and 6 Ors. 2008 (1) CTC 816 at page 817 wherein it is held as follows:

Though Section 73 empowers Court to compare signatures it would be advisable for Court to refer matter to expert when there is a serious dispute with regard to signature and where signatures are found in many documents and even execution of mortgage deed is in dispute and moreover, signature can be compared with admitted signature available prior in point of time and contemporaneous as lapse of time may result in difference in signature of a person.

6. In response, the learned Counsel for the first respondent/decree holder/wife contends that the Executing Court as per Section 73 of the Indian Evidence Act is entitled to

compare the disputed signature and in the instant case, has compared the signature in Ex.R.1 receipt with that of the signature of the respondent/wife found in the execution petition and has come to the definite conclusion that there is a difference in regard to the two signatures and moreover, when the respondent/wife has denied the Ex.R.1 receipt the revision petitioner/husband has not proved his version to the satisfaction of the Court that he has paid the lifetime maintenance amount of Rs. 25,000/- and resultantly, passed a correct order in law and the same need not be interfered by this Court sitting in revision.

7. Also it is the further contention of the learned Counsel for the respondent/decree holder that Ex.R.1 receipt is an uncertified one and therefore, much credence need not be given to it. He relies on the decision of this Court in Lakshmi Narayanan Vs. S.S. Pandian, wherein it is held that "if intention of parties is to extinguish decree and compromise is recorded under Order 21, Rule 3 execution of decree cannot be proceeded with and if intention of parties is to keep decree active and give effect to it later in the manner agreed upon between parties in the compromise, decree will be given effect to and executed accordingly."

8. He also presses into service the decision of Honourable Supreme Court in Padma Ben Banushali and Another Vs. Yogendra Rathore and Others, wherein it is held that "it is open to the parties viz. Decree holder and judgment-debtor to enter into contract or compromise in regard to rights and obligations under decree and if such contract or compromise amounts to adjustment of decree it has to be recorded by Court and further, uncertified payment or adjustment not recorded by Court cannot be recognized by Executing Court and in such situation, only enquiry that can be conducted by Executing Court is to find out whether plea taken amounts to adjustment or satisfaction of decree and whether it has effect of extinguishing decree either in whole or part."

9. Also he draws the attention of this Court to the decision in Thangavel Vs. Kuppusamy Mudaliar, wherein it is held that "Judgment debtor filed an application u/s 47 for terminating execution proceedings for full satisfaction and that the petition is not maintainable as payment by any mode other than those specified in Order 21 Rule 2 (2-A) and 3 cannot be recognised by executing court."

10. It is to be borne in mind that Section 73 of the Indian Evidence Act is silent as to who shall make comparison of the disputed signature in issue. In other words, whether a comparison should be made by a Court or whether a comparison could be made by an Expert or another individual. However, a Court of law can compare the disputed signature within its power although it is hazardous in nature. It may not be safe for a Court of law to record a finding about a persons writing in a document merely on the basis of comparison, but the Court can itself compare the writings in order to appreciate properly the other evidence produced before it as per decision S v. Vinaya Chandra AIR 1967 SC 778.

11. This Court worth recalls the observation of O ''Brien J in Miller v. Wheat lay 28 LR Ir 144 at 160 wherein it is held that "proof to the satisfaction of the Judge implied a personal judgment by him and not the mere presumption of genuineness arising from the age of the deed."

12. As far as the present case is concerned, in the main suit O.S. No. 700 of 1996 a decree has been passed against the civil revision petitioner towards maintenance amount directing the revision petitioner to pay a sum of Rs. 700/- per month. The case of the revision petitioner is that the respondent/wife has issued a receipt with full satisfaction. However, this version of the revision petitioner is denied by the respondent/wife and according to the respondent/ wife, it is false to state that Ex.R.1 receipt has been issued by her. Equally, the respondent/wife earlier has filed E.P. No. 39 of 2000 for arrest of the revision petitioner/husband and admittedly, the revision petitioner/ husband has been arrested on 27.11.2000 and has been committed to civil prison.

13. In law, detention of a person in enforcing a decree does not amount to discharge/satisfaction of the decree. As a matter of fact, Order 21 Rule 32 of CPC presupposes the existence of a decree passed in accordance with law. Indeed, the respondent/wife/decree holder is given the option in law to proceed in any way he likes and the revision petitioner/judgment debtor cannot question the mode of execution against him and even if it be a mortgage decree, in the considered opinion of this Court.

14. In the instant case on hand, when Ex.R.1 receipt has been denied by the respondent/wife, then it is the duty of the revision petitioner/husband to prove the same in the manner known to law. Unfortunately, before the Executing Court Ex.R.1 receipt purported to have been issued by the respondent/wife/decree holder/plaintiff has not been sent for obtaining handwriting expert''s opinion and in this regard, the civil revision petitioner has not taken any steps. Though the Executing Court can compare the disputed signature found in Ex.R.1 receipt with that of the signature of the respondent/plaintiff seen in the execution petition, yet the same is hazardous, in the considered opinion of this Court. Moreover, in uncertified payment or adjustment not recorded by a Court cannot be proved or recognized by an Executing Court in the eye of law, as opined by this Court.

15. Therefore, in view of the fact that the respondent/wife has denied the Ex.R.1 receipt and inasmuch as the revision petitioner/husband has not taken positive steps in regard to proving the alleged signature of the respondent/wife/plaintiff as seen in Ex.R.1 by sending the same to an handwriting expert for obtaining its opinion, this Court, on the basis of equity, fair play, good conscience and even as a matter of prudence, directs the revision petitioner/husband/defendant to take necessary steps before the Executing Court in regard to filing of an application praying for permission of the Court for obtaining the opinion of an handwriting expert in regard to the genuineness of signature as seen in Ex.R.1 with that of the admitted signature of the respondent/plaintiff in the manner known to law, within a period of 10 days from the date of receipt of copy of this order and the

respondent/wife is at liberty to file counter to the said application and the Court shall pass orders thereto on merits and the revision petitioner/defendant shall pay the remuneration/fee for handwriting expert to be fixed by the Court and if the handwriting expert''s opinion is filed, then it is open to the respondent/plaintiff to file an objection thereto and the Executing Court, upon receipt of the report and objections, if any, filed thereto, shall proceed further in the execution petition from the present stage where it has left.

16. With these observations, the Civil Revision Petition is disposed of. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.