(2012) 01 KL CK 0034

In the High Court Of Kerala

Case No : C.R.P. No. 464 of 2008

Molly Ajithkumar APPELLANT

Vs

Vimala Sasidharan and Another RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 55, 55(6)

Citation : AIR 2012 Ker 87 : (2012) 1 KLJ 499

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Anil K. Narendran, for the Appellant; K.S. Hariharaputhran, George Mathew and M.H. Hanil Kumar, for the Respondent

Judgement

K.T. Sankaran, J.—The Civil Revision Petition is filed by respondent No. 2 in E.P.No. 149 of 2006 in O.S.No. 496 of 2005 on the file of the court of the Additional Munsiff of Alappuzha. By the order impugned, the objections to the execution raised by the petitioner were rejected by the court below. On 15.2.2005, an agreement for sale was executed between Prabhakaran (second respondent) and Vimala Sasidharan (first respondent). As per the terms of the agreement, Prabhakaran agreed to sell an item of property having an extent of 9 cents in favour of Vimala for a consideration of Rs. . 7 lakhs. An advance of Rs. . 4,50,000 was paid to the seller. Under the agreement, the time for performance was agreed to be on or before 17.8.2005.

2. Even before the time stipulated for completing the transaction, Vimala filed O.S.No. 496 of 2005 on the file of the court of the Additional Munsiff, Alappuzha against Prabhakaran for an injunction restraining the defendant from alienating the plaint schedule property to strangers, contrary to the terms of the agreement for sale. The suit was filed on 27.7.2005. On 27.8.2005, the parties to the suit entered into a compromise. A compromise decree was passed in terms of the compromise. As per the compromise, a sum of Rs. . 1,80,000 was paid back by the vendor to (he vendee. It was agreed that the vendor need not execute the

assignment deed in favour of the vendee (Vimala). The vendor agreed to return the balance amount of Rs. . 2,70,000 to Vimala within a period of six months. It was also agreed that on failure to pay the aforesaid amount of Rs. . 2,70,000/-, the vendor has to pay interest at 12% per annum on that amount and that the property in question would be a charge for such amount.

3. Since the vendor did not repay Rs. . 2,70,000 as per the terms of the compromise, the vendee (Vimala) filed E.P.No. 149 of 2006 to execute the compromise decree and to realise the amount by sale of the property in question. In the Execution Petition, the petitioner in this revision (Molly Ajithkumar) was also made respondent No. 2 on the ground that Prabhakaran assigned the property to the revision petitioner. The revision petitioner is none other than the daughter of the vendor (Prabhakaran). On receipt of notice in the Execution Petition, Prabhakaran and the revision petitioner engaged the same lawyer and paid a sum of Rs. . 20,000/- to the decree holder. They also prayed for time to pay the balance amount. However, they did not pay the balance decree amount. The execution proceedings continued. The proceedings for sale of the property were taken by the decree holder. At that juncture, the revision petitioner engaged another counsel and filed objections in the Execution Petition. She contended that the Execution Petition is not maintainable and that the property could not be proceeded against for realisation of the decree amount. The vendor also filed an objection stating that the decree was obtained by fraud.

4. The executing court rejected the contentions raised by the revision petitioner as well as by her father, by a detailed order dated 1.1.2008, which is under challenge in this revision.

5. Sri. Anil K. Narendran, the Learned Counsel for the petitioner submitted that the compromise decree is not binding on the revision petitioner as she was not a party to the compromise. A charge was created over the property by the terms of the compromise. The petitioner is not bound by such a charge. Even if mere is a liability on the part of the judgment debtor to pay the amount to the buyer (Vimala), the property in question cannot be proceeded against for realisation of the amount. It is also contended that the statutory charge u/s 55(6)(b) of the Transfer of property Act is not available in favour of the decree holder as it has lost its significance after the compromise. The Learned Counsel submitted that the suit was not for specific performance of the agreement for sale, but only for an injunction. No suit was filed for specific performance and therefore, the statutory charge u/s 55(6)(b) of the Transfer of Property Act cannot be invoked by the decree holder/buyer.

6. The Learned Counsel for the first respondent submitted that the statutory charge u/s 55(6)(b) would never be lost and it would have force even after the passing of the compromise decree. The counsel submitted that the decree holder having not improperly declined to accept delivery of the property, the charge u/s 55(6)(b) of the Transfer of Property Act would continue to apply in spite of the intervening compromise decree.

7. Section 55 of the Transfer of Property Act provides for the rights and liabilities of the buyer and seller. Section 55(6) of the Transfer of Property Act reads thus :

55 (6) The buyer is entitled -

(a)....................................

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller''s interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

8. At the time when the compromise was entered into on 27.8.2005, the vendor had no title to the property as he had transferred the property to his daughter (revision petitioner) on 21.7.2005. Therefore, it may be true that the vendor could not create a charge over the property by a compromise entered into between him and the vendee. Even if the compromise is otherwise found to be enforceable, the charge created as per the terms of the compromise may not as such be available as against the revision petitioner, unless it is established that the transfer in favour of the revision petitioner was a fraudulent transfer. The statutory charge u/s 55(6)(b) of the Transfer of Property Act would never be lost to the vendor even though he has not filed a suit for specific performance on the basis of the agreement for sale. For the purchase price paid by him, he is entitled to a charge over the property. The legal requirement is that he has not improperly declined to accept delivery of the property. There is no case for the revision petitioner or her father that the buyer ever improperly declined to accept delivery of the property. The principle underlying Section 55(6)(b) of the Transfer of Property Act is a principle of justice, equity and good conscience. The buyer''s charge u/s 55(6)(b) is a statutory charge as distinguished from a contractual charge. The charge comes into force the moment the buyer pays the purchase money or any part thereof. The charge would be lost only if the buyer commits default. The subsequent compromise entered into between the seller and the buyer and that too at a time when the seller had lost title, would not efface the statutory charge available to the buyer u/s 55(6)(b) of the Transfer of Property Act. For the aforesaid reasons, I am of the view that the order passed by the executing court does not call for any interference as there is no error of law or error of jurisdiction in the proceedings. The Learned Counsel for the petitioner submitted that a request was made before the executing court that only a portion of the property need be sold for realisation of the decree debt. A Commissioner was appointed by the executing court to value the property. It is submitted that dismissal of this revision should not affect the right of the petitioner to contend that it is not necessary to sell the entire extent of land for realisation of the decree debt. It is made clear that the dismissal of this revision

would not affect any such right of the revision petitioner provided it is legally available to her.

For the aforesaid reasons, the Civil Revision Petition is dismissed.

