



C.R.P(MD)No.866 and 867 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2023

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.866 and 867 of 2023

and

C.M.P(MD) No.3939 and 3941 of 2023

C.R.P(MD)No.866 of 2023

Kuthalingam

...Petitioner/Respondent/
Defendant

Vs.

Meenakshi Sundaram

... Respondent/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in E.P.No.18 of 2017 in O.S.No.86 of 2009, dated 16.02.2023 by the learned District Munsif cum Judicial Magistrate, Cheranmahadevi.

For Petitioner : Mr.S.Mahesh Babu

C.R.P(MD)No.867 of 202

Kuthalingam

...Petitioner/Respondent/
Defendant



C.R.P(MD)No.866 and 867 of 2023

Vs.

Meenakshi Sundaram

... Respondent/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in E.P.No.19 of 2017 in O.S.No.84 of 2009, dated 16.02.2023 by the learned District Munsif cum Judicial Magistrate, Cheranmahadevi.

For Petitioner : Mr.S.Mahesh Babu

For Respondent : No Appearance

COMMON ORDER

The petitioner is aggrieved by the impugned order passed by the District Munsif cum Judicial Magistrate, Cheranmahadevi in E.P.Nos.18 and 19 of 2017 in O.S.Nos.86 and 84 of 2009, respectively. By the impugned order, the District Munsif cum Judicial Magistrate, Cheranmahadevi held as under:

"In E.P.No.18 of 2017 in O.S.No.86/2009

- 1. The Decree Holder/plaintiff has filed this EP to enforce a money decree of Rs.25,760/- along with accrued interest as per the decree in O.S.86/2009 by attaching and sale of the EP schedule property of the Judgment debtor.*
- 2. The respondent/Judgment Debtor filed a formal counter and contends that the property jointly belongs to JD and his wife by name Indira. Since the property stands in*



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joint ownership the same cannot be attached and sold as to realize the decretal amoun. Thus, prayed for dismissal of the E.P.

Now the point to be determination is:

Whether this EP is to be allowed or not?

3. The bone of contention of the Judgement Debtor is that the property morefully described in the EP petition, he has only an undivided half interest and, therefore, it cannot be attached and sold in execution. However, the perusal of the EP petition would reveals that the Decree Holder also prayed to attach only an undivided share and sale the same so as to realize the decretal amount.

4. After considering the rival submissions, this court is of the thoughtful opinion that there is no bar in attaching the undivided share of the respondent/Judgment Debtor, and there is also no bar to selling an undivided interest in the immovable property. It is because of the settled law that the purchaser of undivded share in immovable property can very well file a partition suit and get his share determined by metes and bounds. Ergo, this court is inclined to allow this EP

Hence attach by., Batta in 3 days.

In E.P.No.19 of 2017 in O.S.No.84/2009

1. The Decree Holder/plaintiff has filed this EP to enforce a money decree of Rs.92,256/- along with accrued interest as per the decree in O.S.84/2009 by attaching and sale of the EP schedule property of the Judgment debtor.

2. The respondent/Judgment Debtor filed a formal counter and contends that the property jointly belongs to JD and his wife by name Indira. Since the property stands in joint ownership the same cannot be attached and sold as to realize the decretal amoun. Thus, prayed for dismissal of the E.P.

Now the point to be determination is:

Whether this EP is to be allowed or not?

3. The bone of contention of the Judgement Debtor is that the property morefully described in the EP petition, he has only an undivided half interest and, therefore, it cannot be attached and sold in execution. However, the perusal of



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the EP petition would reveals that the Decree Holder also prayed to attach only an undivided share and sale the same so as to realize the decreetal amount.

4. After considering the rival submissions, this court is of the thoughtful opinion that there is no bar in attaching the undivided share of the respondent/Judgment Debtor, and there is also no bar to selling an undivided interest in the immovable property. It is because of the settled law that the purchaser of undivided share in immovable property can very well file a partition suit and get his share determined by metes and bounds. Ergo, this court is inclined to allow this EP

Hence attach by., Batta in 3 days."

2. The petitioner is the defendant in O.S.Nos.84 and 86 of 2009.

The suits were decreed by the District Munsif cum Judicial Magistrate, Cheranmahadevi as early as on 29.06.2012.

3. The petitioner filed appeals in A.S.Nos.47 and 48 of 2012, which were also unsuccessful as the said appeals were dismissed on 17.02.2016. After the dismissal of the above appeals, the respondent initiated proceedings to recover the amount from the petitioner in E.P.Nos.18 and 19 of 2017. In the said proceedings, the petitioner filed a counter stating that the property jointly belongs to the petitioner and his wife and that unless there is partition of the property, it cannot be attached.



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4. The learned counsel for the petitioner also filed a copy of the sale deed executed in favour of the petitioner and his wife.

5. Therefore, there is no merit in the submission of the learned counsel for the petitioner. The petitioner has to pay the amount as decreed or in the alternative face the consequences for not honouring the decree passed as early as on 29.06.2012, which was confirmed on 17.02.2016 in A.S.Nos.47 and 48 of 2012.

6. The present Civil Revision Petitions are liable to be dismissed. Accordingly, they stand dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

29.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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- 1.The District Munsif cum Judicial Magistrate,
Cheranmahadevi.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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