

RESERVED ON 29.06.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO. 547 OF 2025

C/W

COMMERCIAL APPEAL NO. 548 OF 2025



IN COMAP No. 547/2025

BETWEEN:

1. SUBRAMANYAM V.R.
S/O. LATE SRI V.R. RAMAKRISHNA SHASTRY
AGED ABOUT 82 YEARS
RESIDING AT FLAT NO. 003
"SPARSHA ANAND", SBM EMPLOYEES HOUSING
CO-OPERATIVE SOCIETY LTD.
SBM COLONY, 1ST MAIN, GAREHALLI
SRINIVASANAGAR, BANGALORE - 560 050
2. PUSHPA NAGENDRA
AGED ABOUT 44 YEARS,
D/O. SUBRAMANYAM. V.R.
RESIDING AT NO. R82
2ND CROSS, CHIKKANNA GARDEN
SHANKARPURAM, BASAVANAGUDI
BANGALORE - 560 004

...APPELLANTS

(BY SRI S.V. GIRIDHAR, ADVOCATE FOR
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE)

Digitally
signed by K
P SWETHA
Location:
High Court
of Karnataka

AND:

1. ASHA ANANTHA PRASAD
W/O. OF ANANTHA PRASAD D.S.
AGED ABOUT 55 YEARS
R/AT NO. 88, AKSHAYA
5TH CROSS, 3RD MAIN ROAD
VADIRAJA LAYOUT, AKSHAYNAGARA
BANGALORE - 560 068
2. BHARADWAJ FINANCE
NO. 9, 'MANDASMITA'
MOOKAMBIKA TEMPLE ROAD
OPPOSITE TO MOOKAMBIKA TEMPLE
HOSAKERAHALLI, BSK 3RD STAGE
BANGALORE - 560 085
ALSO AT:
SRI BHARADWAJ FINANCE
C/O. SRI LAXMI TOURS AND TRAVELS
NO.120/9, 1ST FLOOR, K.R. ROAD
2ND MAIN, TATA SILK FARM
(OPPOSITE GARADI APARTMENTS)
BASAVANAGUDIT, BANGALORE - 560 004
REPRESENTED BY PROPRIETOR
MR. RAMAMURTHY
3. RAMAMURTHY
AGED ABOUT 50 YEARS,
R/AT SPARSH ANAND APARTMENTS
BUILDING NO. 136, HOUSE NO. 003
1ST FLOOR, 80 FEET MAIN ROAD
SRINIVASANAGAR SBM COLONY
AFTER SITA CIRCLE
OPPOSITE BIMAL MARUTHI SUZUKI SHOWROOM
ADJACENT TO SAM TOURS AND TRAVELS
BANGALORE - 560 050

...RESPONDENTS

(BY SRI RAVISHA M.G., ADVOCATE FOR R-1 &
RESPONDENTS No.2 & 3 ARE SERVED & UNREPRESENTED)

THIS COMMERCIAL APPEAL IS UNDER SECTION 13 (1A) OF THE COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 96 AND ORDER XLI RULES 1 AND 2 OF THE CODE OF CIVIL PROCEDURE, 1908 PRAYING TO SET ASIDE THE ORDER AND DECREE DATED 29.08.2025 IN COM.EX NO.241/2023 PASSED BY THE LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (EXCLUSIVE COMMERCIAL COURT), BENGALURU CITY (CCH-88), (DOCUMENT NO.2) AND CONSEQUENTLY ALLOW IA.II FILED BY THE APPELLANTS UNDER ORDER 21 RULE 58 OF THE CODE OF CIVIL PROCEDURE, 1908 & ETC.

IN COMAP NO. 548/2025

BETWEEN:

1. SUBRAMANYAM V.R.
S/O. LATE SRI V.R. RAMAKRISHNA SHASTRY
AGED ABOUT 82 YEARS
RESIDING AT FLAT NO. 003, SPARSHA ANAND
SBM EMPLOYEES HOUSING
CO OPERATIVE SOCIETY LTD.
SBM COLONY, 1ST MAIN, GAREHALLI
SRINIVASNAGAR, BANGALORE - 560 050
2. PUSHPA NAGENDRA
AGED ABOUT 44 YEARS
D/O SUBRAMANYAM V.R.
RESIDING AT NO. R82, 2ND CROSS
CHIKKANNA GARDEN

SHANKARPURAM, BASAVANAGUDI
BANGALORE - 560 004

...APPELLANTS

(BY SRI S.V. GIRIDHAR, ADVOCATE FOR
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE)

AND:

1. ANUSHREE A
D/O ANANTHA PRASAD D.S.,
AGED ABOUT 28 YEARS
REPRESENTED BY ATTORNEY HOLDER
SRI ANANTHA PRASAD D.S.
S/O LATE SATYANARAYANA RAO
AGED ABOUT 58 YEARS
R/ AT NO. 88, 'AKSHAYA'
5TH CROSS, 3RD MAIN ROAD
VADIRAJA LAYOUT, AKHSAYNAGARA
BANGALORE - 560 068
2. BHARADWAJ FINANCE
NO. 9, 'MANDASMITA'
MOOKAMBIKA TEMPLE ROAD
OPPOSITE TO MOOKAMBIKA TEMPLE
HOSAKERAHALLI, BSK 3RD STAGE
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ALSO AT
SRI BHARADWAJ FINANCE
C/O SRI LAXMI TOURS & TRAVELS
NO. 120/9, 1ST FLOOR, K.R. ROAD
2ND MAIN, TATA SILK FARM
(OPPOSITE GARADI APARTMENTS)
BASAVANAGUDI, BANGALORE - 560 004
REPRESENTED ITS PROPRIETOR
MR. RAMAMURTHY

3. RAMAMURTHY
AGED ABOUT 50 YEARS
R/AT SPARSH ANAND APARTMENTS
BUILDING NO.136, HOUSE NO. 003
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(BY SRI RAVISHA M.G., ADVOCATE FOR R-1 &
RESPONDENTS No.2 & 3 ARE SERVED & UNREPRESENTED)

THIS COMMERCIAL APPEAL IS UNDER SECTION 13 (1A) OF THE COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 96 AND ORDER XLI RULES 1 AND 2 OF THE CODE OF CIVIL PROCEDURE, 1908 PRAYING TO SET ASIDE THE ORDER AND DECREE DATED 29.08.2025 IN COM.EX NO.240/2023 PASSED BY THE LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (EXCLUSIVE COMMERCIAL COURT), BENGALURU CITY (CCH-88), (DOCUMENT NO.2) AND CONSEQUENTLY ALLOW IA.II FILED BY THE APPELLANTS UNDER ORDER 21 RULE 58 OF THE CODE OF CIVIL PROCEDURE, 1908 & ETC.

THESE COMMERCIAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present appeals under Section 13(1A) of the Commercial Courts Act, 2015, read with Section 96 of the Code of Civil Procedure, 1908 [**the CPC**].
2. COMAP No.547/2025 assails the order and decree dated 29.08.2025 passed by the learned LXXXVII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru [**Commercial Court**] on I.A.No.II in COM.Ex.No.241/2023.
3. The appellants had filed the said application under Order XXI Rule 58 read with Section 151 of the CPC, objecting to the attachment of an immovable property – Apartment No.003, Ground Floor in a building, Sparsha Ananda Apartment, Gerehalli, SBM Colony, Srinivasanagara, Bengaluru [**subject property**]. The subject property was registered in the name of appellant No.1 under a sale deed dated 30.07.2012. He had gifted the same to his

daughter (appellant No.2) under a registered gift deed dated 26.06.2023.

4. The subject property was attached in the execution proceedings for recovery of an amount from respondent Nos.2 and 3. Respondent No.2 is a sole proprietorship concern of respondent No.3 (Sri Ramamurthy) and, therefore, has no identity independent of its proprietor. Respondent Nos.2 and 3 are, hence, collectively referred to as the Judgment Debtor/**JDR**. The learned Commercial Court tried the said application as a suit and concluded that the subject property is a joint property of the appellants and the JDR. Accordingly, the court lifted the attachment of the subject property to the extent of 2/3rd share while maintaining the attachment to the extent of 1/3rd share of the JDR.

5. The appellants in COMAP No.548/2025 are the same as those in COMAP No.547/2025. They assail the order and decree dated 29.08.2025 passed by the learned Commercial Court in I.A.No.II of Com.Ex.No.240/2023. They filed the said application objecting to the attachment of the subject property for the execution of a decree against the JDR (also arrayed as respondent Nos.2 and 3 in the present appeal). The learned Commercial Court rejected the said

application on the ground that it was not maintainable, as the subject property was not attached. The learned Commercial Court reasoned that an application under Order XXI Rule 58 of the CPC would not lie if there is no attachment.

6. Although the learned Commercial Court found that the warrant of attachment issued in COM.Ex.No.240/2023 had not been executed, it held that the amount recovered from the sale of the 1/3rd share of the subject property attached in COM.Ex.No.241/2023 would be available to satisfy the decree that was the subject of enforcement in COM.Ex.No.240/2023 as well.

7. The order and decree dated 29.08.2025 passed by the learned Commercial Court in COM.Ex.No.240/2023 and COM.Ex.No.241/2023 are impugned in the present appeals and are hereafter collectively referred to as the '**impugned orders**'.

8. COM.Ex.No.240/2023 was instituted by Ms. Anushree A. (respondent No.1 in COMAP No.548/2025) for a recovery of a sum of ₹5,34,438/- with interest at the rate of 12% per annum from 14.12.2021 (the date of institution of the suit) till realization and costs of ₹46,083/-, as decreed in terms of judgment dated

08.02.2023 in COM.O.S.No.873/2021 (decree drawn on 04.03.2023).

9. Smt. Asha Anantha Prasad (respondent No.1 in COMAP No.547/2025) [the **decree holder/DH**] had instituted COM.Ex.No.241/2023 for enforcing the judgment dated 08.02.2023 (decree drawn on 04.03.2023) passed by the learned Commercial Court in Com. O.S.No.874/2021, for a sum of ₹19,22,000/- along with interest at the rate of 12% per annum from 14.12.2021 till realization, and costs of ₹1,06,115/-.

10. We note that the two decree holders are closely related. Ms Anushree A., the petitioner in COM. Ex. No.240/2023, is the daughter of the decree holder and her husband, Sri Anantha Prasad D.S., and is prosecuting the execution proceedings through him as her attorney.

11. The learned counsel for the parties agree that the decision in COMAP No.547/2025 would be dispositive of COMAP No.548/2025 as well.

12. As noted above, the learned Commercial Court's order dated 29.08.2025, which is impugned in COMAP No.548/2025, dismissed

the application for lifting the attachment order on the subject property on the ground that the property was not attached. The appellants' grievance in respect of this order is, thus, confined to the direction that the 1/3rd share of the subject property as attached in COM.Ex.No.241/2023 would be available for satisfaction of the decree under execution in COM.Ex.No.240/2023.

13. The appellants assail the impugned orders¹ on two grounds: first, that the JDR has no share in the subject property and, therefore, the same is, in any event, not available for execution of the decree against him; second, that the subject property was transferred by appellant No.1 to appellant No.2 on 26.06.2023, that is, prior to the execution of the attachment order.

14. In view of the above, the first and foremost question to be addressed is whether the JDR has or had any share in the subject property. It is relevant to note that the appellants were neither parties to the suit which culminated in the decree sought to be executed, nor were they arrayed as judgment debtors in the execution proceedings. They entered the proceedings only as objectors under Order XXI Rule 58 of the CPC. The learned

¹ Order dated 29.08.2025 in COM.Ex.No.240/2023 and COM.Ex.No.241/2023)

Commercial Court had proceeded against the subject property to the extent of 1/3rd share solely on the premise that the JDR is a joint owner of the subject property to the aforesaid extent.

15. In this background, the key issue to be addressed is whether the evidence on record establishes that the JDR is a joint holder of the subject property.

16. At this stage, it is relevant to note that appellant No.1 has three children; two sons and a daughter. One of his sons is Sri Sridhar. V.S., who is not a party to the present proceedings. The JDR, Sri Ramamurthy is his second son, and appellant no. 2 is his daughter.

17. The decree holder in Com.Ex.No.241/2023 had filed an application (I.A.No.1 under Order XXI Rule 30 read with Section 151 of the CPC) seeking a warrant of attachment and sale of the subject property to the extent of 1/3rd share. In the affidavit filed in support of the said application, the decree holder, inter alia, affirmed as under:

"I state that the Judgment Debtor along with his brother, sister, father purchased the Scheduled Property in the name of his father V.R.Subramanyam under Registered Sale Deed dt:30/07/2012, Vide.Doc.No.CMP-1-02490-2012-13. Thereafter one of his brother Sri.Shreedhar.V.S released his share in favor of

the Judgment Debtor, his sister Pushpa Nagendra and father V.R.Subramanyam under the registered release deed dt:16/08/2012 Vide.Doc.No.CMP-1-02952-2012-13. Accordingly the Judgment Debtor is having a definite share in the Scheduled Property. The encumbrance stands in the name of Judgment Debtor and his father and sister."

18. Although it is asserted that the subject property was jointly purchased in the name of appellant No.1, the decree holder did not produce any evidence (either documentary or oral) to establish the said assertion. However, during their cross-examination, the appellants (OW-1 and OW-2) were confronted with a release deed dated 16.08.2012 (Ex. D-1) executed by Sri. Sridhar V.S., son of appellant No. 1, in favour of the appellants and the JDR. The appellants also examined themselves and produced a series of sale deeds to substantiate that the subject property was the self-acquired property of appellant No.1.

19. On the basis of the said deed and the evidence led by the appellants (OW-1 and OW-2), the learned Commercial Court concluded that the JDR had a pre-existing right over the subject property to the extent of a 1/3rd share and, accordingly, held that only 2/3rd of the subject property was not liable for attachment.

20. We note from the impugned orders that there is no analysis of the evidence led by the appellants. However, it appears that the only document on which the impugned orders are premised is Ex.D1, which is a release deed executed by appellant No.1's son - Sri.Sridhar V.S. in favour of the appellants and JDR.

21. It is thus necessary to analyze the evidence led by the appellants. The appellants had produced a registered sale deed dated 04.01.1978 (Ex.OW-1), which reflected that appellant No.1 had purchased a property described as premises No.298/44, Sunkenahalli, adjacent site (Hanumanthanagar) in the Corporation Division No.31, Bengaluru for a consideration of ₹41,000/- (Rupees Forty One Thousand only). Appellant No.1 had sold the aforementioned property under a sale deed dated 08.06.2001 (Ex.OW-2) for a consideration of ₹10,50,000/- (Rupees Ten Lakhs Fifty Thousand only).

22. The recitals of the said sale deed indicate that the consideration was received in four tranches during the period from 31.01.2001 to 06.06.2001: the first tranche of ₹5,000/- on 31.01.2001, and the final tranche of ₹4,00,000/- on 06.06.2001.

23. Appellant No.1 had affirmed that he partly utilized the said consideration for purchasing another property bearing No.40/1 (earlier being the western portion of B.D.A. Site No.146/A), 12th Main Road, Nagendra Block, Banashankari 3rd Stage, Bengaluru measuring 1,350 square feet for ₹8,00,000/- under a sale deed dated 13.06.2001 (Ex.OW-3). The recitals of the said sale deed indicate that the consideration of ₹8,00,000/- was paid in three tranches – ₹4,00,000/- on 28.02.2001, ₹2,00,000/- on 10.05.2001, and ₹2,00,000/- on 19.05.2001. These tranches were paid in close proximity to the time of the receipt of the sale consideration under the sale deed dated 08.06.2001 (Ex.OW-2).

24. Appellant No.1 sold the aforementioned property, which was purchased under the sale deed dated 13.06.2001 (Ex. OW-3) for a consideration of ₹46,00,000/- under a sale deed dated 25.07.2012 (Ex.OW-4). The said consideration was also received in tranches – ₹4,00,000/- and ₹5,50,000/- were received on 18.06.2012, and the balance ₹36,50,000/- was received on 24.07.2012.

25. It is the appellants' case that appellant No.1 acquired the subject property from the sale consideration received under the sale deed dated 25.07.2012 (Ex.OW-4). The subject property was

purchased under a registered sale deed dated 30.07.2012 (Ex.OW-8) for a consideration of ₹30,00,000/-.

26. According to appellant No.1, the subject property was thus his self-acquired property, purchased out of the funds from the sale of his erstwhile property, as evidenced by the sale deed dated 25.07.2012 (Ex.OW-4).

27. Appellant No.1 had also produced a property tax receipt dated 12.06.2024 (Ex.OW-5) reflecting that the property tax had been paid by appellant No.2 after the subject property was gifted to her under a registered gift deed dated 26.06.2023 (Ex.OW-9). The appellants produced a communication dated 16.08.2023 (Ex.OW-6) issued by the Bruhat Bengaluru Mahanagara Palike recording that, on the basis of the registered gift deed, the *Khata* of the subject property was transferred to the name of appellant No.2, as well as an endorsement issued by the revenue office (Ex.OW-7) reflecting appellant No.2 as the owner of the subject property.

28. There is no document that establishes that the JDR or his brother had acquired any interest in the subject property. As noted above, there is no material whatsoever to reflect that the subject

property had been purchased jointly by the JDR and his siblings in the name of appellant No.1, as asserted by the decree holder.

29. As noted hereinbefore, the decree holder had not led any evidence. The only document relied upon by the decree holder is a release deed dated 16.08.2012 (Ex.D1) whereby appellant No.1's son, Sri Sridhar.V.S., had purportedly released and relinquished all his claims, rights, title and interest in respect of the subject property. On the basis of the said document, the learned Commercial Court reasoned that Sri Sridhar V.S. had a share in the subject property. And, proceeding on that assumption, the court reasoned that his siblings would also have equal shares therein.

30. Thus, it is necessary to refer to the said release deed (Ex D.1). The relevant contents of the same are reproduced below:

RELEASE DEED

This Deed is executed on this Sixteenth day of August Two Thousand Twelve (16/08/2012) by

Mr. SRIDHAR V.S,
XXX

Hereinafter called as Releaser, which term shall mean and include his heirs Legal Representatives, executors, assigns as First Party.

IN FAVOUR OF

1) Mr. V.R. SUBRAMANYAM,

xxx

2) Mr. RAMAMURTHY V.S.

xxx

3) Mrs. PUSHPA NAGENDRA,

xxx

Hereinafter called Releasee which term shall mean and include their heirs. Legal Representatives, executors, assigns as Second Party.

And Whereas the Releasor, Second Release and the Third Releasee are the children of First Releasee.

WHEREAS the first Releasees the absolute owner of the apartment bearing No. 003 in SPARSHA APARTMENTS situated at SBM Colony, Banashankari Bangalore and the same is morefully and clearly described in the schedule B and C hereunder and hereinafter referred to as schedule property constructed on schedule A property and he purchased the same under an Absolute Sale Deed dated 30/07/2012, registered as document No.2490 stored on CD. No CMPD 56 at the Office of the Sub Registrar, Chamrajpet, Bangalore.

WHEREAS the Releaser intends to live separately with his family and to ensure that the first Releasees right in an over the schedule property is intact, the releaser has executed this Deed and in this regard the 1st Releasee for himself and on behalf of second and third Releasee's has paid a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) in view of Releaser releasing. relinquishing all his claims, right, title and interest in and over the schedule property confirming the fact that henceforth either during the life time of the First Releasee or after his demise, neither the Releaser nor any person. claiming in trust for him will have no manner of right, title and interest in and over the schedule property for all time to come and further the releaser confirms that the First Releasee is at Absolute liberty to deal with the

schedule property in future in any manner beneficial to him without any reference to the Releaser or his Legal Representatives.

WHREAS the First Releasee has paid the said sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) to the Releaser in the following manner.

a) Rs. 1,00,000/- (Rupees One Lakh Only) by way of Cheque bearing No. 252335 dated 25th May 2012 drawn on Sir M. Vishweshwaraiah Co Op Bank Ltd. Shankarapuram Branch, Bangalore.

b) Rs. 1,00,000/- (Rupees One Lakh Only) by way of Cheque bearing No. 252337 dated 13th June 2012 drawn on Sir M. Vishweshwaralah Co Op Bank Ltd., Shankarapuram Branch, Bangalore.

c) Rs. 1,00,000/- (Rupees Ten Lakhs Only) through RTGS Vide Cheque bearing No. 524514 dated 16/08/2012 drawn on Canara Bank, Hanumanthnagar Branch.

d) Rs. 3,00,000/- (Rupees, Three Lakhs Only) by way of a cheque bearing No. 252338 dated 16/8/2012. drawn on Sir M. Vishweshwaraiah Co Op Bank Ltd.,

WHEREAS the Releaser has intended and decided to separate himself from the First Releasee and his family members and leave separately In future.

Now This Deed Witnesseth as follows:-

1) The Releaser Releases his right, titte and Interest over the schedule property out of Love and Affection in favour of the Releasee

2) The Releaser Assures the Releasee that he or his Legal heir's shall not claim any Right, title and interest over the schedule Property

4) This Deed of Release is executed by the Releasor Voluntarily without any force or Coercion.

SCHEDULE A

All the piece and parcel of immoveable Vacant property site New Municipal No. 31, (Old No. 138/139) situated at Gerehalli, SBM Colony, B Bangalore 560 050, presently known as 1 Main, SBM Employees Housing Co OP Society Ltd.. Layout, Srinivasnagar, Bangalore PID No.. 54-1-31 in Bangalore Mahanagara Palike Ward No. 54 measuring

East to West: 74.6+74 feet/2

North to South: 50 feet Totally measuring
3715 sq.ft. and bounded on

East by: Site No. 150/153,
West by: 80 feet Road

North by: site No. 135/140

South by: Site No. 137/138

SCHEDULE B

(Property released under this Deed)

310 (Three Hundred and Ten) sq ft of undivided share in lands measuring Vacant property site New Municipal No. 31, (Old No. 136/139) situated at Gerehalli, SBM Colony, B Bangalore 560 050, presently known as 1st Main, SBM Employees Housing Co OP Society Ltd., Layout, Srinivasnagar, Bangalore PID No.. 54-1-31 in Bangalore Mahanagara Palike Ward No. 54.

SCHEDULE C

(property released under this Deed)

Apartment bearing Unit No. 003 (Zero Zero Three) situated at Ground Floor having a super built up

area of 775 sq ft (Seven Hundred Seventy Five) in the building SPARSHA ANAND on the schedule A property including a Car parking at the stilt floor bearing car parking unit No. 03 (Zero Three) measuring 10 x 15 in total 150-sq-ft.

31. It is apparent from the contents of the release deed that there is no assertion that Sri Sridhar V.S. had acquired any right, title or interest in the schedule property. On the contrary, the first recital records that the first releasee (appellant No.1) is the *"absolute owner of the apartment bearing No.003 in SPARSHA APARTMENTS..."* and that he had *"purchased the same under an Absolute sale deed dated 30/07/2012"*. There is no reference to any of the parties buying the subject property in the name of appellant No.1. The said release deed only records that the releaser (Sri Sridhar.V.S.) would have no right, title or interest in the schedule property. It is also relevant to note that Schedule A of the deed describes the site on which the building stands; the properties released under the deed include those described in Schedules B and C, namely, the undivided share in the said land and the apartment unit, which together constitute the subject property. Insofar as the subject property is concerned, there is an unequivocal assertion in the release deed that appellant No.1 is the absolute owner.

32. Given the evidence that has been produced, it is clearly established that the subject property was the absolute property of appellant No.1 and, by virtue of the gift deed dated 26.06.2023 (Ex.OW-9), is now the absolute property of appellant No.2.

33. In view of the above, the subject property cannot be proceeded against for execution of the decrees, which are the subject matter of execution in COM.Ex.No.240/2023 and COM.Ex.No.241/2023.

34. Consequently, the present appeals are liable to be allowed and it is not necessary to examine the second question, that is, whether the subject property was attached prior to its transfer on 26.06.2023. However, for the sake of completeness, we may also address the said question.

35. The impugned order in COM.Ex.No.241/2023 indicates that the learned Commercial Court had proceeded on the premise that the subject property, of an approximate value of ₹70,00,000/-, was attached on 31.07.2023 by execution of the warrant. The order sheet dated 19.06.2023 indicates that the learned Commercial Court had, on that date, directed the issuance of a warrant for

attachment of the subject property. However, the subsequent order dated 12.07.2023 indicates that the warrants had not been executed and the court directed re-issuance of the attachment warrant. The said order of 12.07.2023 reads as under:

"Advocate for Dhr is present.

Attachment warrant of movables returned with bailiff shara as in sufficient charge paid by the Dhr.

Heard.

Reissue attachment warrant of immovable property as per earlier order with subject to payment insufficient tom tom charges by 02.08.2023."

36. It is apparent from the above that the gift deed dated 26.06.2023 was executed prior to the execution of the warrant of attachment. In terms of Section 64 of the CPC, a private transfer or delivery of property attached, contrary to such attachment, is void as against all claims enforceable under the attachment. It is equally well settled that for the said bar to operate, the attachment must be an effective one. In the present case, the order sheet/record does not indicate that the attachment of the subject property was effected prior to 26.06.2023 – the date on which the gift deed was executed and registered.

37. In view of the above, the impugned orders are set aside. The attachment of the subject property in COM.Ex.No.240/2023 and COM.Ex.No.241/2023 stands lifted.

38. The appeals are allowed in the aforesaid terms.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KPS