

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(NPD).No.4217 of 2017

Aroquame Amalor Julien

..Petitioner

Vs.

1.Rozario
2.Alphonse
Colette Marie Reime (Died)
3.Marie Josephine Pappaemalle

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the fair and decretal order dated 23.10.2017 passed in E.A.No.(un numbered) of 2017 in E.P.No.208 of 2005 in O.S.No.614 of 1985, on the file of the principal Subordinate Judge, Pondicherry.

For petitioner : Mr.Subbaih
Senior Counsel
for M/s.Elizabeth Ravi

ORDER

According to the revision petitioner, the respondents 1 and 2 herein have filed a suit in OS.No.614 of 1985 for partition and declaration. In the aforesaid suit, preliminary decree was passed and subsequently, final decree was also passed by the trial court. Subsequent to that, the respondents 1 and 2 / decree holders have filed an execution petition in EP.No.208 of 2005 for executing the final decree. At this stage, in the above EP, the revision petitioner has filed an application in unnumbered EA for attachment of 1/3 share of the suit property before delivery. The said application was rejected by the court below questioning that how order of attachment would be made in respect of another suit property. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned senior counsel would submit that since the revision petitioner has filed a suit in OS.No.382 of 1971 for recovery of money and obtained decree against the respondents / decree holders, the present application for attachment of the 1/3 share of the suit property for the satisfaction of the aforesaid decree has been filed. But the court below has dismissed the said application. Hence, the revision petitioner has filed the present

Civil Revision Petition before this Court.

3. During the course of arguments, the learned senior counsel admitted that challenging the Judgment and Decree passed in OS.No.614 of 1985, an appeal has been filed before this Court and the same is pending.

4. From the submissions of the learned Senior Counsel, it is clear that when the said appeal is pending, filing such an application for attachment of 1/3 share is not maintainable. Therefore, the court below has rightly rejected the said application. However, it is open to the revision petitioner to work out his remedy before appropriate court, if so advised.

5. The Civil Revision Petition fails and the same is dismissed. No costs.

WEB COPY 20.11.2017

Speaking/Non-speaking order

Index :Yes/No

Internet :Yes/No

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D.KRISHNAKUMAR. J,

lok

To

The principal Subordinate Judge,
Pondicherry.



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