

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

O.S.A.No.119 of 2013
M.P. No 1 of 2013

S. Kesavan

Appellant

Vs

1. City Union Bank
Chrompet Branch,
77, Station Road,
First Floor, Radha Nagar,
Chrompet, Chennai 600 044
rep by its Branch Manager,

2. Mrs.Uma Rengan

3. K.S. Srinivasa Rengan

Respondents

Appeal filed Under Order 36 R.1 of Original Side Rules r/w clause 15 of the Letters Patent against the order of the learned Single Judge made in Application No.5503 of 2012 in C.S. No 1189/09 dated 19.12.2012 on the file of this Court.

Application Praying that this Hon'ble Court be pleased to raise the order of attachment before judgment in view of DRC No.116/2010 dated 4.11.2010 issued by D.R.T.III, Chennai in respect of the immovable properties described in the schedule to this Judge's Summon and permit the recovery officer of the Debt Recovery Tribunal-III, Chennai to proceed with the sale of the said properties pursuant to D.R.C. No 116 of 2010.

Schedule-A

All that piece and parcel of land and building at Flat No. F-7 Second Floor, Ruby Manor, Door No 208-A Velachery Main Road measuring about 1545 sq.ft together with undivided share of land measuring 649 sq.ft in Old Survey No.9A/1A1 and 9A/2A2 in No.33, Selaiyur Village.

Schedule-B

Residential apartment No.6, First Floor "Dr.Chandra Apartment" New No.18, Old No. 28A, Muthuramalingam Street, Tambaram East, Chennai 600 059.

Schedule-C

All that piece and parcel of land and building situated at Survey No.14/7, old No 166, New No.27, Patta No 2141, new Survey No.14/7A situated in Tambaram Municipality, Tambaram Taluk, Kanchipuram District measuring about 6 $\frac{3}{4}$ cents together with ACC shed.

For Appellant : Mr.R.Kannan
For 1st respondent : Mr.R.S. Varadarajan
for M/s Ram & Rajan Associates
For R.2 & R.3 : Notice returned

JUDGMENT

The appellant is the plaintiff in the suit in C.S.No.1189 of 2009 before the learned Single Judge of this Court. That suit has been filed against the respondents 2 and 3 herein for recovery of Rs.42,00,000/- with interest, which is due under a Pronote, allegedly executed by respondents 2 and 3 herein. During the pendency of the said suit, this Court granted an order of attachment of the immovable property, belonging to the respondents 2 and 3.

2. The first respondent/City Union Bank Limited alleges that the same immovable property had been mortgaged to the bank for securing loan and for recovery of the amount. Proceedings were pending before Debts Recovery Tribunal, wherein, the Debts Recovery Tribunal has issued recovery Sale Certificate. Based on the same, the first respondent/City Union Bank filed an application in A.No.5503/2012 for raising the attachment made by this Court. By order dated 19.12.2012 the learned Single Judge of this Court raised attachment. Challenging the same, the appellant have come up with this appeal.

3. We have heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the records carefully.

4. It is brought to the notice of this Court that subsequent to the impugned order, one property has been sold in auction. Further, as rightly held by the learned Single Judge,

mortgage of these properties was prior in point of time to the date of attachment ordered by this court. Therefore, the learned Single Judge has rightly clarified and disposed of the application. We do not find any infirmity in the order passed by the learned Single Judge. Thus, the clarification made by the learned Single Judge does not require any interference. We find no merit in this appeal. Therefore, the appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is also dismissed.

s/d-
Assistant Registrar (CS VI)

//True Copy//

Sub-Assistant Registrar

To

The Sub Assistant Registrar,
(Original Side),
High Court, Chennai.

+1 CC to Mr. R. Kannan, Advocate sr 3605

O.S.A No.119 of 2013

PA (CO)
SP/3/2

सत्यमेव जयते

WEB COPY