

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 22.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN**C.M.A(MD)No.1136 of 2015 &
M.P(MD)No.1 of 2015**

R.K.Mohankumar ... Appellant/Petitioner/3rd Party

Vs.

1.K.Seshadri ...RespondentNo.1/Petitioner/
Respondent No.1/Plaintiff
(Caveator)

2.Vijayalatha

3.Ramakrishnan ... Respondents/Respondent Nos.
2 & 3/Respondent No.1 & 2/
Defendant Nos. 1 & 2

PRAYER: Appeal filed under Order 43 Rule 1 of Code of Civil Procedure against the order and decretal order dated 24.04.2015 passed in E.A.No.11 of 2013 in E.P.No.26 of 2012 in O.S.No.132 of 2008 on the file of the Second Additional District and Sessions Judge, Thanjavur.

For Appellant : Mr.Y.Prakash

For Caveator :Mr.P.Sesubalan Raja for R1

For Respondents 2&3: Ex-parte
*******JUDGMENT**

This Civil Miscellaneous Appeal has been preferred by a third party and the subsequent purchaser of the properties, namely, the plots measuring about 2621 Sq.ft comprised in Town Survey No.884/2; 1868 Sq.ft comprised in Town Survey No.884/3; 504 Sq.ft comprised in Survey No.884/4 and 206 Sq.ft comprised in Survey No.885, originally belonging to the respondents 2 and 3.

2.1. The respondents 2 and 3 are the owners of the properties. The respondents 2 and 3 borrowed money from the first respondent. Since the respondents 2 and 3 failed to repay the money to the first respondent, he filed the suit in O.S.No.132 of 2008 on the file of the Principal District Judge, Thanjavur, for recovery of money to the tune of Rs.7,39,200/- (Rupees Seven Lakhs Thirty Nine Thousand Two Hundred only) along with interest on principal amount of Rs.7,00,000/-. The suit was decreed.

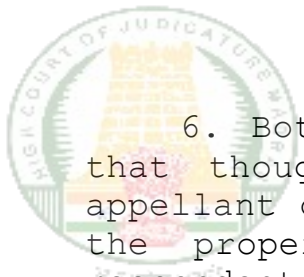
2.2. In the said suit, I.A.No.217 of 2008 was filed by the first respondent for attachment before judgment. On 05.08.2009, the respondents 2 and 3 appeared before the trial Court and filed a counter affidavit in which, they undertook not to sell the said property till the disposal of the suit. Recording the above undertaking, the above application was closed.

2.3. After giving undertaking before the trial Court and before disposal of the suit, the respondents 2 and 3 are said to have sold the properties to the appellant herein on 15.03.2010, without disclosing the undertaking given by them before the trial Court. Thereafter, the suit was decreed on 20.04.2010.

3. On 29.11.2010, the first respondent issued a notice to the respondents 2 and 3 as well as to the appellant that the Sale Deed dated 15.03.2010 is against the undertaking given by them. By reply, dated 18.12.2010, the appellant replied that he is a *bona fide* purchaser for valuable consideration and that he was not aware of the alleged undertaking.

4. The first respondent filed E.P.No.26 of 2012 for recovery of the decretal amount by conducting an auction sale of the subject properties. That apart, he has also filed a contempt petition before this Court in Cont.P(MD)No.662 of 2011 and the same is pending before this Court. On 26.10.2012, the trial Court passed an order of attachment of the subject properties in the E.P filed by the first respondent. On 16.07.2013, the appellant filed E.A.No.11 of 2013 seeking to raise the order of attachment. The said attachment petition was dismissed by the trial Court by order dated 24.04.2015, holding that the undertaking given by the respondents 2 and 3 before the trial Court would amount to attachment before judgment. Against the said dismissal order only, the present appeal has been filed.

5. When the matter is taken up for hearing, the appellant as well as the first respondent are present. The respondents 2 and 3 even before the E.P Court remained *exparte* in E.A.No.11 of 2013 as evident from the impugned order and therefore, there is no necessity to issue notice to the respondents 2 and 3 as per the Full Bench judgment of the Madhya Pradesh High Court in **Jamunabai and others -Vs- Chhote Singh and others** reported in (2004) 1 ACC



6. Both the appellant and the first respondent would submit that though the issue is among the respondents 1 to 3, the appellant decided to settle the matter as he has already purchased the properties by paying the valuable consideration to the respondents 2 and 3 and his right would be prejudiced if the order of attachment is not raised and therefore, decided to settle the matter by wiping out the liability as per the decree passed in O.S.No.132 of 2008 for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only). A sum of Rs.3,00,000/- (Rupees Three Lakhs only) by way of Cheque, dated 22.02.2017, is said to have been paid (subject to the realisation) by the appellant to the first respondent and agreed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) on 15.03.2017; a sum of Rs.2,00,000/- (Rupees Two Lakhs only) on 15.04.2017 and a sum of Rs.3,00,000/- (Rupees Three Lakhs only) on 15.05.2017. The first respondent who is present before this Court has agreed to receive the same. The above understanding has been reduced into writing by way of a Joint Memo of Compromise, dated 22.02.2017, signed by both parties and countersigned by the respective Counsels. The Joint Memo of Compromise shall form part of this order.

7. Therefore, this Civil Miscellaneous Appeal is disposed of, based on the statements made by the parties and based on Joint Memo of Compromise, dated 22.02.2017. However, only after the payment as stated in the Joint Memo of Compromise is paid to the first respondent, the order of attachment shall be raised and consequently, the encumbrance shall also be removed by the appropriate authorities.

8. It goes without saying that the appellant who is a third party purchaser has not only paid the sale consideration for having purchased the properties from the respondents 2 and 3 and also paid a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) in excess to the first respondent only to raise of the order of the attachment. It would be a default payment and therefore, it is open to the appellant to take appropriate proceedings against the respondents 2 and 3 to recover a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) paid to the first respondent. No costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Encl : Joint the Compromise

Memo Xerox copy

Sub Assistant Registrar



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To

The Second Additional District and Sessions Judge,
Thanjavur.

Copy To : The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.P.Sesubalan Raja for Caveator Sr.No.9745

+1CC to Y.Prakash, Advocate Sr.No.10548

GJM/RSK/10.3.17-4p-5C

C.M.A (MD) No.1136 of 2015
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