



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.172 of 2017 (NPD)
and
C.M.P (MD) No.744 of 2017

M.Kesavan .. Petitioner/Petitioner/Respondent/
Defendant
Vs.

M.Pandiservai .. Respondent/Respondent/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order, dated 03.01.2017 passed in E.A.No.40 of 2016, in E.P.No.6 of 2013 in O.S.No.183 of 2004, on the file of the District Munsif Court, Melur thereby allowing the Civil Revision Petition.

For Petitioner : Mr.K.M.Thiruppathy

ORDER

This petition has been filed by the petitioner to set aside the order, dated 03.01.2017 passed in E.A.No.40 of 2016, in E.P.No.6 of 2013 in O.S.No.183 of 2004 by the District Munsif Court, Melur.

2.The petitioner is the defendant in the suit and respondent in E.P.No.6 of 2013. The respondent filed suit in O.S.No.183 of 2004 against the petitioner before the District Munsif, Melur for recovery of money. The said suit was decreed by the said judgment and decree, dated 25.08.2009. The petitioner did not file any appeal. The said Judgment and decree has become final. The respondent filed E.P.No.6 of 2013 to execute the decree. The petitioner did not appear on 08.04.2015 and he was set ex-parte. The learned Judge after considering the evidence of respondent ordered the attachment of property of the petitioner. The petitioner filed E.A.No.21 of 2015 to set aside the ex-parte order passed in the E.P.No.6 of 2013 setting him ex-parte. After contest, the said application was allowed. The petitioner filed the present application in E.A.No.40 of 2016 for raising attachment. The respondent filed counter and submitted that if attachment of the property is raised there is every possibility of the petitioner alienating or encumbering the property to third party. The learned Judge considering the fact that the decree in the suit in O.S.No.183 of 2004 has become final and by attachment of the property, the right of the petitioner is not affected. If attachment is raised there is every possibility of the petitioner alienating or encumbering the property to third party and



considering the attitude of the petitioner to drag-on the execution proceedings, dismissed the E.A.No.40 of 2016 filed by the petitioner to raise the attachment with cost of Rs.1,000/-.

3. Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner was set ex-parte in E.P.No.6 of 2013 and attachment of the property was ordered. The petitioner filed E.A.No.21 of 2015 to set aside the ex-parte order passed in E.P.No.6 of 2013. The said order was subsequently set aside. In view of the same, order of attachment imposed also be raised. The learned Judge directed the petitioner to file a memo for raising attachment. The petitioner filed detailed memo on 19.1.2017. Subsequently, the learned Judge directed the petitioner to file application. The petitioner filed present E.A.No.40 of 2016 for raising attachment. The learned judge considering the fact that exparte order against the petitioner was set aside, dismissed the application for raising attachment. The reason given by the learned judge are not valid. Therefore, prayed for allowing C.R.P., and order raising attachment.

5. I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

6. The respondent filed suit in O.S.No.183 of 2004 against the petitioner before the District Munsif, Melur for recovery of money. The said suit was decreed by the said judgment and decree, dated 25.08.2009. The petitioner did not file any appeal. The said Judgment and decree has become final. The respondent filed E.P.No.6 of 2013 to execute the decree. The respondent was examined as P.W.1 and E.P., was posted for cross-examination by counsel for the petitioner. In spite of opportunity being given, the petitioner did not appear and cross-examine the respondent. In the circumstances, the petitioner was set ex-parte in the E.P.No.6 of 2013 and attachment of the property was ordered and attachment was also effected. The petitioner filed E.A.No.21 of 2015 to set aside the ex-parte order passed in E.P.No.6 of 2013. The said application was allowed on 11.02.2016. Thereafter, the petitioner filed E.A.No.40 of 2016 for raising attachment.

7. From the materials on record, it is seen that the reason for raising attachment as claimed by the petitioner is that order setting him ex-parte was set aside, therefore, the order of attachment also must be raised. The learned Judge considered the contention of the petitioner as well as the fact that the petitioner is dragging on E.P.No.6 of 2013 held that by attachment, right of the petitioner will not be affected in any way. On the other hand, it safeguard the interest of the decree holder to



realise the decree amount. The learned Judge also considered the age of the respondent is 86 years and no appeal is filed by the petitioner against the decree in O.S.No.183 of 2009, dated 25.08.2009, dismissed the application on the ground that the petitioner is dragging on the execution proceedings. The learned Judge has considered all the materials in proper perspective, dismissed the application and there is no illegality or irregularity warranting interference by this Court.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

9.The learned counsel for the petitioner submitted that the petitioner is willing to conduct the Execution Proceedings on day today basis. Considering the contention of the learned counsel for the petitioner, the learned District Munsif, Melur, is directed to dispose E.P.No.6 of 2013 as expeditiously as possible, in any event, not later than 30th April, 2017.

SD

ASST REGISTRAR

TRUE COPY

SUB ASST REGISTRAR (CS I)

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To

The District Munsif, Melur.

2CC TO MR. K.M.THIRUPATHY, ADVOCATE SR: 4596

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