IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4585 of 2018
and W.M.P.Nos.5637 & 5638 of 2018

S.Rathinam ... Petitioner

vs.

The Tax Recovery Officer-I,
Income Tax Department,
Office of the Tax Recovery Officer-I,
67-A, Race Course Road,
Coimbatore-641 018. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the order of attachment of immovable property situated at No.649-650, Raja Street, Coimbatore-641 001, which belong to the petitioner passed by the respondent dated 19.01.2018 in T.R.C.No.2, 3 & 4/NCR-1/2015-16/TRO-1/CBE and to quash the same.

For Petitioner : Mr.P.K.Sabapathi

For Respondent : Mr.A.P.Srinivas,
Standing Counsel

O R D E R

Heard Mr.P.K.Sabapathi, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing counsel for the respondent. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner has impugned an order of attachment passed in the name of one Thiru S.Jayakumar. The said S.Jayakumar is the petitioner's son and he is no more and died on 13.06.2017. Thus, on the date, when the impugned attachment order was issued, the said S.Jayakumar was no more and therefore, the order of attachment passed in the name of a dead person is non-est in the eye of law.

3. Apart from that, the petitioner would contend that the property was owned by her and she is the absolute owner. However, out of love and affection, in the year 2011, she settled the property in favour of her son, vide Settlement Deed dated 11.04.2011 registered as Doc.No.2298/2011 at the Office of the Joint-1 Sub-Registrar, Coimbatore. However, the settlement is a conditional settlement, that is, subject to the life interest reserved by the petitioner, she is entitled to be in possession and enjoyment of the property and absolute ownership and only after the life time, the settlement would take effect. Thus, it is evidently clear that without conducting any proper enquiry, the respondent has passed the impugned attachment order. As on date, the petitioner being the absolute owner of the property is entitled to be in possession and enjoyment. The question of attaching the said property cannot arise, more particularly, by issuing an order of attachment in the name of a dead person. These are all sufficient to interfere with the impugned notice.

4. Thus, for the above reasons, this writ petition is allowed and the impugned notice is quashed. However, this order will not prevent the respondent from proceeding in accordance with law afresh. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

abr
To

The Tax Recovery Officer-I,
Income Tax Department,
Office of the Tax Recovery Officer-I,
67-A, Race Course Road,
Coimbatore-641 018.

+ 1 cc to Mr. P.K. Sabapthi, Advocate Sr.39475
+ 1 cc to Mr.A.P. Srinivas, Advocate Sr.39500

W.P.No.4585 of 2018

(CS-DR)
EU(02/07/2018)