

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.07.2018
CORAM
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
ORIGINAL SIDE APPEAL NOS.106 TO 108 OF 2017

V.R.Mukunthan

... Appellant
in O.S.A.No.106/2017

.Vs.

1.D.Sampathkumar

2.The Official Assignee
High Court Buildings,
Chennai.

3.Sridharan

... Respondents
in O.S.A.No.106/2017

V.R.Mukunthan

... Appellant
in O.S.A.Nos.107 & 108/2017

Vs.

1.The Official Assignee
High Court Buildings,
Chennai.

2.Sridharan

3.D.Sampathkumar

... Respondents
in O.S.A.Nos.107 & 108 /2017

The above Original Side Appeals are filed under Order 36 Rule 9 of O.S.Rules R/W Clause 15 of the Letter Patent to set aside the fair and decreetal order passed in A.Nos.220, 234 & 236 of 2014 in I.P.No.47 of 2011 dated 03.03.2017.

Prayer in A.No.220 of 2014:-

Application praying that this Hon'ble Court be pleased to direct the first respondent/official assignee to hand over the

scheduled property in the Judge's summon to the petitioner/third party after vacating the movable properties inside the scheduled property in the Judge's Summons.

Prayer in A.No.234 of 2014:-

Application praying that this Hon'ble Court be pleased to declare the transfer of the insolvent's property described in the schedule to the Judges Summons in favour of the 3rd respondent herein as null, void and not binding upon the Official Assignee.

Prayer in A.No.236 of 2014:-

Application praying that this Hon'ble Court be pleased to permit the Official Assignee to sell the property of the 2nd respondent in the described in the schedule to the Judge's Summons in public auction and the sale proceeds rateably divided amongst the General Body of Creditors or for such other reliefs in the circumstances of the case.

Prayer in I.P.47 of 2011:-

A) declare the transfer of the Insolvent's property described in the Schedule hereunder in favour of the 2nd Respondent herein as null, void and not binding upon the official assignee.

B) issue a warrant permitting the official assignee to seize the property described in the schedule hereunder from the custody or possession of the 2nd Respondent or any other person, men, agent or servants acting under him with the assistance of Police and also permission to break open the lock of the main door, if necessary.

C) directing the 2nd Respondent his men, agent or servants or any other person acting on behalf of the 2nd Respondent to deliver the vacant possession of the said property described in the Schedule hereunder with all documents of title in his possession to the official assignee.

D) permit the official assignee to sell the property of the 1st Respondent described in the Schedule hereunder in public auction and the sale proceeds rateably divided amongst the General Body of Creditors or for such other reliefs in the circumstances of the case and thus render justice.

SCHEDULE OF PROPERTY

All that piece and parcel of the vacant land bearing New Door No.7/19, Marrison I Street, Alandhur Village, Chennai-600 016 comprised in Pymesh No.78, Survey No.10/1 part, Ward A Block No.3, Town Survey No.193/3, measuring 3 grounds 785 sq.ft or thereabouts, existing thereon and as bounded on the:

North by : Krishnaveni's Land
South by : Morrison 1st Street
East by : Raool's House
West by : Orange Home's Flats

Situated within the Registration District of Chennai South and the Sub-Registration District of Alandur.

For Appellant : Mr.C.A.Theagarajan
(for all OSAs)

OSA No.106/2017

For Respondents : M.D.Parthasarathy for R 1

Ms.C.B.Meena for R2
Official Assignee
Mr.M.Vasanthakumar
Deputy official Assignee

Mr.S.L.Venkatesan for R3

OSA Nos.107 & 108/2017

For Respondents : Ms.C.B.Meena for R1
Official Assignee
Mr.M.Vasanthakumar
Deputy official Assignee

Mr.S.L.Venkatesan for R2

M.D.Parthasarathy for R 3

COMMON JUDGMENT

(Judgment of the Court delivered by N. ANAND VENKATESH, J)

These appeals have been filed against the common orders passed in A.Nos.220/2014, 234/2014 & 236/2014 in I.P.No.47/2011 dated 03.03.2017.

2.The facts in brief:

The appellant in these appeals filed a suit against the 3rd respondent for recovery of money and a decree was passed based on a Memo of Compromise on 11.11.2010 in C.S.No.575 of 2010. The third respondent was subsequently adjudicated as insolvent and was served with insolvency notice on 26.04.2011. However, the third respondent sold the subject matter of property by Sale Deed dated 03.06.2011 in favour of the first respondent. Consequently, the above said applications came to be filed to declare the sale made by the third respondent in favour of the first respondent as null and void and also for a direction to the Official Assignee to sell the property in a public auction and distribute the sale proceeds amongst the General Body of Creditors.

3.The learned Single Judge by a Common Order dated 03.03.2017 was pleased to hold that the first respondent is bonafide purchaser, and therefore the sale made in his favour cannot be set aside and also directed the Official Assignee to hand over possession of the property to the first respondent.

4.When the above appeals were pending, the learned counsel for the first respondent, on instructions from his client volunteered to deposit a sum of Rs.26,00,000/- [Rupees Twenty Six Lakhs Only] along with interest at the rate of 7% p.a. from 07.06.2010 till 30.11.2017, and this Court had directed the first respondent to deposit the amount by an order dated 28.11.2017. Subsequent to the order, a sum of Rs.39,65,000/- [Rupees Thirty Nine Lakhs Sixty Five Thousand Only] was deposited with the Registrar General of this Court by way of a demand draft on 06.12.2017. The Registrar General of this Court was directed to invest the said amount in a Fixed Deposit with any one of the Nationalised Banks.

5.The above appeals were thereafter listed for final hearing. During the course of final hearing, the Official Assignee stated that there are only two claims insofar as the insolvent is concerned. The appellant in the above appeal is one of the claimant and the other person named C.Vijayan is the other claimant. A report dated 02.07.2018 has been filed mentioning the same.

6.The total principal amount due and payable to the appellant is a sum of Rs.44,20,920/- [Rupees Forty Four Lakhs Twenty Thousand Nine Hundred and Twenty Only]. Out of this amount Rs.21,00,000/- [Rupees Twenty One Lakhs Only] has already been paid to him and therefore the balance amount payable to the appellant on the principal amount is a sum of Rs.23,20,920/- [Rupees Twenty Three Lakhs Twenty Thousand Nine Hundred and Twenty Only]. The total principal amount payable to the said C.Vijayan is a sum of Rs.22,15,000/- [Rupees Twenty Two Lakhs Fifteen Thousand Only]. This Court suggested that the appellant and C.Vijayan can receive a consolidated amount covering the principal amount and giving the quietus to the whole issue. Accordingly on instructions, the learned counsel for the appellant agreed to receive a sum of Rs.45,00,000/- [Rupees Forty Five Lakhs Only] in full quits. C.Vijayan who was also present in the Court agreed to receive a sum of Rs. 21,65,000/- [Rupees Twenty One Lakhs Sixty Five Thousand Only] in full quits.

7.A sum of Rs.39,65,000/- [Rupees Thirty Nine Lakhs Sixty Five Thousand Only] was deposited in the Court by the first respondent and we directed the learned counsel for the first respondent to pay a further sum of Rs.6,00,000/- [Rupees Six Lakhs Only]. We also further ***direct the first respondent** to pay a sum of Rs.32,169/- [Rupees Thirty Two Thousand One Hundred and Sixty Nine Only] in the office of the Official Assignee towards administrative charges and other mandatory payments as listed out in the report of the Official Assignee dated 02.07.2018. Th learned counsel for the first respondent on instructions from his client has agreed to make the payments suggested by this Court.

8.The following chart will give a clear Idea as to the payments made/payments to be made and the entitlement of the appellant and the said C.Vijayan.

Amount deposited with the Registrar General of this Court	Rs.39,65,000/-
Extra amount to be paid by the first respondent.	Rs.6,00,000/-
Total=	Rs.45,65,000/-

Amount deposited with the Registrar General of this Court	Rs.39,65,000/-
Amount due and payable to the appellant. Rs.45,00,000/- (-) Rs.21,00,000/- (already paid)	Rs.24,00,000/-
Balance available and payable to C.Vijayan.	Rs.21,65,000/-

9.The following directions are given to the first respondent with regard to the payments to be made by him to the appellant and the said C.Vijayan.

a)The first respondent is directed to take steps to withdraw the amount of Rs.39,65,000/- [Rupees Thirty Nine Lakhs Sixty Five Thousand Only] along with accrued interest, within a period of two weeks from the date of receipt of the copy of this order.

b)The first respondent is directed to take a demand draft for a sum of Rs.24,00,000/- [Rupees Twenty Four Lakhs Only] in the name of the appellant and make the payment within one week from the date of withdrawing the amount as specified above.

c)The first respondent is directed to take a demand draft for a sum of Rs.21,65,000/- [Rupees Twenty One Lakhs Sixty Five Thousand Only] in the name of C.Vijayan within one week from the date of withdrawing the amount as specified above.

d)The first respondent is directed to pay a sum of Rs.32,169/- [Rupees Thirty Two Lakhs One Hundred and Sixty Nine Only] to the Office of the Official Assignee towards administrative and other mandatory charges within one week from the date of receipt of the copy of this order.

e)The payment made by the first respondent as per the directions contained in ***b and c**, is full and final settlement of the amount payable to the appellant and the said C.Vijayan.

f)The first respondent is directed to file an affidavit of compliance along with the proof of payments made specified in [b, c, & d] within a period of four weeks from the date of receipt of the copy of this order. On such filing, the Registry is directed to make the affidavit as part of record in these appeals.

g)The common order passed by the learned single Judge in the applications stands confirmed.

10.The Original Side Appeals are disposed of in terms of the directions issued herein above. In the facts and circumstances of the case there will be no order as to costs.

Sd/-
Assistant Registrar(CS VII)
Dated:06/07/2018

*Corrected as per order
dated 17/7/2018 made in
OSA No.106/2017 to OSA 108 of 2017

Sd/-
Assistant Registrar(CS-IV)
Dated:23/7/2018

//True Copy//

Sub Assistant Registrar

kp
To:

1. The Sub. Asst. Registrar,
Original Side, High Court
Madras. To be substituted for the order
already despatched
on 9/7/2018
2. The Official Assignee,
High Court, Madras.

Copy to

**The Registrar General,
High Court, Madras.**

+1cc to Mr.C.A.Theagarajan, Advocate, S.R.No.43492

+1cc to Mr.C.A.Theagarajan, Advocate Sr.47418

+2cc to Mr.D.Parthasarathy, Advocate Sr.47802

OSA Nos.106 to 108/2017

RSY(CO)
CS/06/07/18
srg 24/07/2018