



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.1963 of 2017

Rajam

... Petitioner/Petitioner/Plaintiff

Vs.

1. Singh

2. Rethinadas

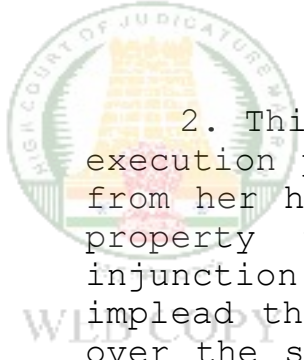
... Respondents/Respondents/Defendants

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order in unnumbered E.P.No. of 2017 (C.R.No.5498 of 2016 and 3255 of 2017) in O.S.No.113 of 2014, dated 01.06.2017 on the file of the learned Principal District Munsif, Kuzhithurai and allow this Civil Revision petition.

For Petitioner : Mr.S.Mandhiralingeswaran
For Respondents : No appearance.

O R D E R

The Revision petitioner is the wife of one Singh, the first respondent herein filed a maintenance suit against him in O.S.No.113 of 2014 on the file of the learned Principal District Munsif, Kuzhithurai. She obtained an order of injunction restraining the husband from alienating the property in question. After such injunction order was obtained against the first respondent, the first respondent was bold enough to alienate the same in favour of the second respondent. Therefore, the second respondent was also impleaded in the suit proceedings. The suit came to be decreed on 25.04.2016. A charge was created on the suit property. Defendants 1 and 2 were made jointly liable to pay the maintenance sum of Rs.4,000/- per month to the Revision petitioner. Since the maintenance amount was not paid, the Revision petitioner filed an execution petition before the learned Principal District Munsif, Kuzhithurai. When the said execution petition was filed, it came to be known that the second respondent sold the property in favour of one Vincent and thereafter, the said Vincent had mortgaged the property in favour of Painkulam Primary Agricultural Co-operative Society. Taking note of all these aspects, the Court below has chosen to reject the execution petition. Challenging the same, this Civil Revision petition has been filed.



2. This Court expresses its surprise over the rejection of the execution petition itself. Here is a woman who seeks maintenance from her husband. To defeat her rights, the husband alienated the property to a third party, after passing of an order of injunction. Therefore, the Court below allowed her petition to implead the alienee in the suit proceedings. Charge was created over the suit property. The entire exercise was only to frustrate the petitioner from getting the fruits of the decree. In such cases, the Court below ought to have taken the execution petition on file and given a number and disposed of the same, after giving liberty to the interested parties. Instead the Court below has rejected the execution petition itself. The order on the face of it is illegal.

3. The order impunged in this Civil Revision petition is set aside. The learned Principal District Munsif, Kuzhithurai, is directed to number the execution petition and dispose of the same in accordance with law within a period of six months from the date of receipt of a copy of this order.

4. The Civil Revision petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar(CS-I)

To

The Principal District Munsif,
Kuzhithurai.

+1. C.C. to M/S.S.Mandhiralingeswaran, Advocate SR.No. 83893

C.R.P. (MD) .No.1963 of 2017
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