



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.08.2018
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (NPD) (MD) .No.278 of 2016 and
C.M.P. (MD) Nos.1112 & 5540 of 2016

A.Kandasamy ... Petitioner/Petitioner/Respondent/
Judgment Debtor/Defendant
Vs.
1. A.Abdul Azees (Died) ... 1st Respondent/1st Respondent/
Petitioner/Decree Holder/Plaintiff
2. K.Chandra ... 2nd Respondent/2nd Respondent/
Claimant/3rd Party
3. Thazliem
4. Jaseela
5. Raihan ... Respondents
(R-3 to R-5 are brought on record
as legal heirs of the deceased
R-1 vide Order dated 30.10.2017
in C.M.P. (MD) No.9603 of 2017)

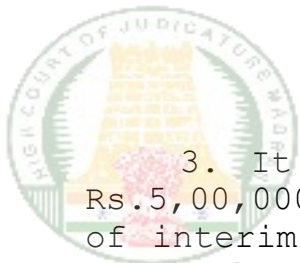
PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair order dated 10.12.2015 passed in E.A.No.96 of 2015 in E.P.No.102 of 2013 in O.S.No.61 of 2010 on the file of the learned Principal District Judge, Tuticorin, by allowing this Civil Revision petition.

For Petitioner : M/s.J.Anandhavalli
For R-3 to R-5 : Mrs.S.Srimathy
for Mr.S.M.S.Johny Basha
For R-1 : Died.
For R-2 : No appearance.

ORDER

The Revision petitioner was the defendant in O.S.No.61 of 2010 filed by the first respondent herein Abdul Azees, on the file of the learned Principal District Judge, Tuticorin.

2. It is a suit for payment of money. The said suit was decreed. The said money decree has become final. To execute the same, E.P.No.102 of 2013 was filed. In the said Execution petition, the Revision petitioner herein filed E.A.No.96 of 2015 for raising the attachment that was made over the 'A' schedule property and instead for attaching the 'B' scheduled property. The said petition was dismissed on 10.12.2015. The correctness of the said order is under challenge in this Civil Revision petition.



3. It is admitted by both the learned counsel that a sum of Rs.5,00,000/- was directed to be deposited as a condition for grant of interim order in this Civil Revision petition and that the said amount has been deposited. There is some controversy as to whether the same has been withdrawn or not. Since the money decree passed against the Revision petitioner has become final, the liability of the Revision petitioner is no longer in doubt. It can be very easily quantified in monetary terms. The present E.A., filed by the Revision petitioner was to raise the attachment over the 'A' schedule property which according to the petitioner belongs to his wife. If that be so, it is the wife who ought to have applied for raising the attachment. Any petition filed by the Revision petitioner is clearly not maintainable. The Court below was justified in dismissing E.A.No.96 of 2015. The order passed by the learned Principal District Judge, Tuticorin, in E.A. No.96 of 2015 in E.P.No.102 of 2013 in O.S.No.61 of 2010, dated 10.12.2015, is affirmed.

4. Whatever is the balance amount shall be paid by the Revision petitioner to the Decree holder within a period of six weeks from the date of receipt of a copy of this order. Till such time, the Execution proceedings shall be put on hold. The 'A' schedule property shall not be brought to auction till then. If the Revision petitioner does not satisfy the decretal liability in toto within a period of six weeks, the Executing Court shall proceed with the Execution proceedings immediately, thereafter.

5. With these directions, the Civil Revision petition stands dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Principal District Judge,
Tuticorin.

+1CC to Mr.S.M.S.Johny Basha, Advocate, SR.No.79007
+1CC to M/s.J.Anandhavalli, Advocate, SR.No.79032

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