



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) .No.1668 of 2018 and
C.M.P. (MD) No.7307 of 2018

1. The Fertilizers and Chemicals
Travancore, Thiruvangore Ltd.,
Head Office Cochin,
Rep. by its General Manager (Marketing),
P.Sudhakaramenon

2. The Fertilizers and Chemicals
Travancore, Thiruvangore Ltd.,
Regional Officer, Madurai,
No.22A, Jawahar 4th Street, S.S.Colony,
Madurai,
Rep. by its Senior Manager,
V.Ruthrathi.

... Revision petitioners/
Respondents 1 & 2/
Petitioners/Plaintiffs

Vs.

1. V.Latha

... 1st Respondent/Petitioner/
3rd Party/3rd Party

2. A.L.Vijaya Raghava Raja ...

2nd Respondent/3rd Respondent/
Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.04.2018 passed in I.A.No.719 of 2010 in I.A.No.245 of 2009 in O.S.No.36 of 2008 on the file of the learned Subordinate Judge, Srivilliputhur.

For Petitioners

: Mr.V.R.Shanmuganathan

For R-2

: Mr.F.X.Eugene

For R-1

: No appearance.

**ORDER**

O.S.No.36 of 2008 on the file of the Sub Court, Srivilliputhur, was filed by the Revision petitioners herein against one A.L.Vijaya Raghava Raja for recovery of a certain sum of money. In the said suit, an application for effecting attachment before Judgment was also taken out. The defendant received notice in I.A.No.245 of 2009. Counter affidavit was also filed on 17.08.2009. Thereafter, not satisfied with the cause shown by the defendant/respondent in the I.A, the learned trial Judge proceeded to pass an order of attachment. There are totally two items of properties. Thereafter, the daughter of the defendant, namely, Latha filed I.A.No.719 of 2010 praying for raising of the attachment in respect of one item of the property. The specific stand taken by the said Latha is that on 01.04.2010, the defendant had settled the property in her favour and that therefore, the order of attachment that was passed on 19.04.2018 will have to be vacated and raised. Accepting the said stand of the said Latha, the Court below allowed I.A.No.719 of 2010 by order dated 19.04.2018. The same is questioned in this Civil Revision petition at the instance of the plaintiffs.

2. Though the said Latha has been served and her name is also printed in the cause list, she has not chosen to enter appearance either in person or through counsel. However, her father who is the sole defendant in the suit is represented by a counsel.

3. The learned counsel appearing for the second respondent herein made a submission that in as much as the settlement was executed by the defendant in favour of his daughter prior to the order of attachment, the order impugned in this Civil Revision petition cannot be faulted. He also pointed out that the only remedy open to the plaintiffs would be to institute a suit impeaching the aforesaid settlement on the ground of fraudulent transfer. One other option open to the plaintiffs is to file a suit claiming as a universal donee.

4. I am unable to agree with the aforesaid submissions made by the learned counsel appearing for the defendant/second respondent herein.

5. It is not in dispute that the Revision petitioners filed I.A.No.245 of 2009 in April 2009. The summon was duly served on the second respondent. He also filed counter affidavit on 17.08.2009. Even when the trial Court was seized of the issue and I.A.No.245 of 2009 was pending, the sole defendant proceeded to settle one of the two items in favour of his own daughter. The defendant had acted himself in such a manner so as to render I.A.No.245 of 2009 infructuous. Such a conduct cannot be appreciated or condoned. But this Court is not willing to drive the plaintiffs to file a separate



suit for impeaching the aforesaid transaction on the ground of fraudulent transfer. In as much as the alienation in question took place during the pendency of I.A.No.245 of 2009, this Court will have to necessarily step in. Litigants cannot be allowed to play fraud on the Court.

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6. In this view of the matter, the order impugned in this Civil Revision petition is set aside. This Civil Revision petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Subordinate Judge,
Srivilliputhur.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1cc to Mr.V.R.Shanmuganathan Advocate in SR.No.91919

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