

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.R.P(NPD)No.670 of 2009

Asalambu

...Petitioner

Versus

1.Ammavasai Udayar

2.Subbarayan

3.Chinnapillai

4.Marimuthu

5.Annakodi

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and final orders dated 29.11.2008 passed in REA.No.533 of 2007 in R.E.P.No.191 of 2006 in O.S.No.139 of 2005 on the file of the Principal District Munsif Court at Thirukovilur.

For Petitioner

:

Ms.N.Premalatha

ORDER

The above Civil Revision Petition arises against the order of the Principal District Munsif Court, Thirukovilur in REA.No.533 of 2007 in R.E.P.No.191 of 2006 in O.S.No.139 of 2005 dated 29.11.2008, in and by which the learned District Munsif had dismissed the Application filed by the revision petitioner to raise the attachment of 4/5th share in respect of the suit property.

2. The revision petitioner is a third party to the execution proceedings. She has filed an Application in REA.No.533 of 2007 in R.E.P.No.191 of 2006 in O.S.No.139 of 2005 to raise the attachment made in the suit property.

3. The brief facts of the case are as follows:

The decree holder/first respondent has obtained a decree as against the judgment debtor/second respondent in the present Application on the basis of the promissory note which said to have been executed by the judgment debtor/second respondent. In execution of the above decree, the property subject matter of the execution proceedings was attached. The revision petitioner is the

sister of the judgment debtor/second respondent and respondents 3 to 5 were also the sisters of the revision petitioner.

4. The revision petitioner filed an Application *inter alia* contending that the suit property is the absolute property of her father. She has equal share in the above property. Her sisters i.e., respondents 3 & 5 have relinquished their share in favour her. On the strength of their right in the suit property, the revision petitioner has filed an Application in REA.No.533 of 2007 in R.E.P.No.191 of 2006 in O.S.No.139 of 2005 to raise the attachment made in the suit property.

5. The decree holder/first respondent filed a counter affidavit objecting the Application REA.No.533 of 2007 in R.E.P.No.191 of 2006 in O.S.No.139 of 2005 on the ground that the same has been filed by the revision petitioner in collusion with the judgment debtor/second respondent who has borrowed the money from decree holder/first respondent for the benefit of his family. Hence, the decree holder/first respondent had sought for the dismissal of the said Application. The Execution Court dismissed the Application filed by the revision petitioner on the ground that she being the sister of judgment debtor/second respondent filed the Application in collusion with the

judgment debtor/second respondent.

6. The learned counsel appearing for the revision petitioner contended that admittedly, the property belongs to the father of the revision petitioner. As far as the judgment debtor/second respondent borrowed the money in individual capacity and invited a decree, the Execution Application has been filed to attach the property in which the revision petitioner is having share. Hence, the learned counsel submitted that the attachment in respect of the 1/5th share of the revision petitioner is required to be raised.

7. The learned counsel appearing for the first respondent/decreed holder submitted that the trial Court has clearly found that the said Execution Application is a result of collusion and therefore, dismissed the said Application and the order does not require interference. There is no dispute with regard to the ownership of property. The trial Court has also found that the property attached in the execution proceedings originally belonged to the father of revision petitioner. Exs.P1 & P2 were filed in this regard. However, the trial Court swayed away by the admission of the revision petitioner that she has unmarried residing with the judgment debtor/second respondent and she is aware

of the decree passed as against the judgment debtor/second respondent and thereafter, she has filed the Application in REA.No.533 of 2007 in R.E.P.No.191 of 2006 in O.S.No.139 of 2005 and come to the conclusion that the Application is a result of collusion.

8. It is to be noted that the suit has been decreed for recovery of money on the basis of the promissory note which said to have been executed by the judgment debtor/second respondent who has borrowed the money from the decree holder/first respondent in his individual capacity, merely because of the reason that he has an unmarried daughter in the family, it may not be considered that borrowal is only towards the welfare of his unmarried daughter.

9. Be that as it may, admittedly, the property belongs to the father of the revision petitioner who had died intestate, that being the position, certainly, the revision petitioner is legally entitled to 1/5th share in the property by virtue of Hindu Succession Act. Therefore, when the revision petitioner has right to her interest over the property merely because her brother/second respondent has borrowed the amount, the entire property cannot be attached. Though the revision

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petitioner contended that her sisters were also relinquished their share in her favour, absolutely, there is no merit in her submission. There is no material available to substantiate the alleged relief sought by her in the revision petition. Therefore, this Court is of the view that the attachment of the 1/5th share of revision petitioner is not correct. Accordingly, attachment is raised only in respect of 1/5th share of the revision petitioner.

10. In the result, this Civil Revision Petition is allowed with the above modification. However, there shall be no order as to costs.

21.03.2019

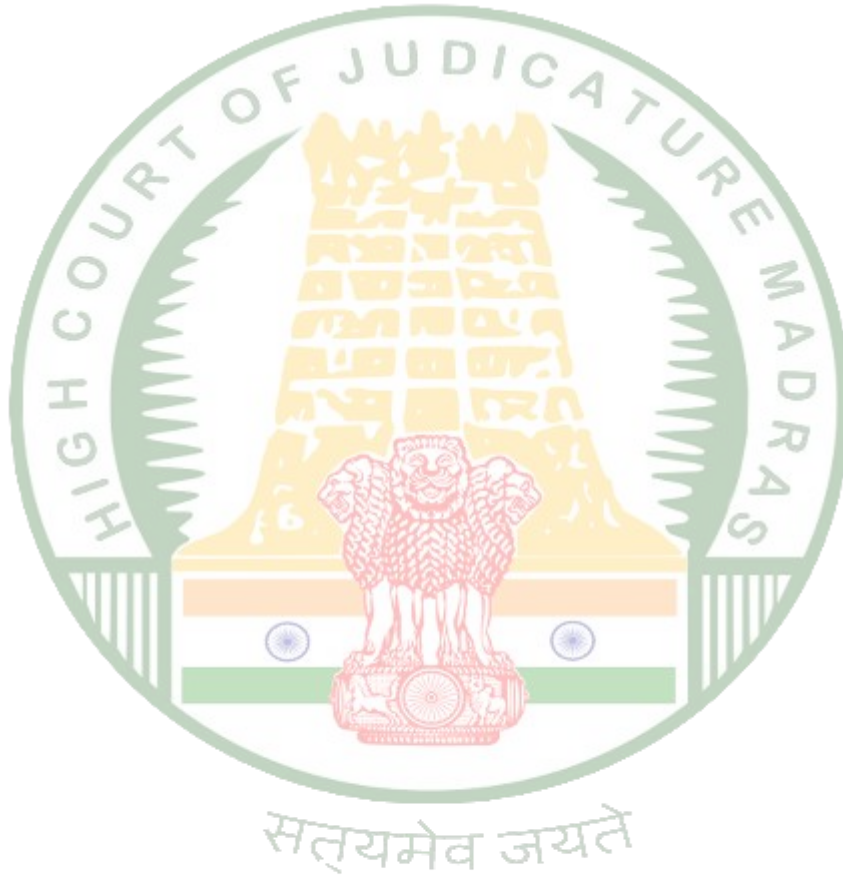
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Index : Yes/No

To

The Principal District Munsif Court,
Thirukovilur.

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