



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **02.12.2019**

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)No.965 of 2013(NPD)

and

M.P(MD)No.3 of 2013

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Sakthivel

.. Petitioner

vs.

Vembaiyan (Died)

2.Thenral

3.Aravinthan

4.Abarna

.. Respondents

(Respondents 2 to 4 brought record as Lrs
of the Deceased sole respondent vide order
dated 09.12.2016 made in MP.1/2015 in CRP 965/2013)

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal order passed by Subordinate Judge, Pattukkottai in E.P.No.19 of 2010 in O.S.No.22 of 2005, dated 07.01.2011.

For Petitioner	: Mr.M.R.S.Prabhu
For R2 to R4	: Mr.R.P.Ramachanthiran
R1	:Died

ORDER

This Civil Revision Petition has been filed challenging the order made by the learned Subordinate Judge, Pattukkottai in E.P.No.19 of 2010.

2. The said Execution Petition was filed by the petitioner herein seeking attachment and sale of the properties belonging to the judgment-debtor/respondent herein in Execution of decree for a refund of advance made in O.S.No.22 of 2005.

3. The suit in O.S.No.22 of 2005 was filed by the petitioner seeking specific performance of agreement, dated 12.02.2004. The said suit was decreed for alternative relief of refund of advance on 22.05.2009. In Execution of said decree, the petitioner herein sought for attachment of the properties that were subject matter of the suit in O.S.No.22 of 2005. In the Execution Petition, the respondent filed a counter stating that the suit properties are purchased by his father Muthusamy Chettiar. The said Muthusamy Chettiar died 140 years prior to the filing of the counter leaving



the respondent/judgment debtor and 7 daughters as his legal heirs. Therefore, according to the respondent, he is entitled to only 1/8th share in the properties and hence, Execution Petition filed seeking attachment of the entire property is to be dismissed. No evidence was let in on either side.

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4. The learned Subordinate Judge, concluded that the petitioner/decree holder had admitted the fact that the respondent/judgment-debtor has got only 1/8th share in the suit property and on the conclusion, the learned Subordinate Judge dismissed the Execution Petition.

5. Aggreieved, the petitioner/decree-holder has come up with the present Civil Revision Petition.

6. I have heard Mr.M.R.S.Prabhu, learned counsel appearing for the petitioner and Mr.R.P.Ramachanthiran, learned counsel appearing for the respondents 2 to 4.

7. The first respondent died pending the Civil Revision Petition and the respondents 2 to 4 have been brought on record as his Legal Heirs.

8. I must straight away pointed out that the order of the Executing Court is materially irregular. The suit was laid by the petitioner herein seeking for a decree of specific performance of an agreement dated 12.02.2004. In the said suit, the first respondent entered appearance and contested the same. There was no pleading in the suit to the effect that he owns only 1/8th share in the suit property. The suit was decreed for alternative relief of refund of advance. In the Execution proceedings, a counter affidavit is filed projecting an entirely new case that the property was purchased by his father Muthusamy Chettiar and therefore, his daughters are also entitled to their share. The sale deeds in respect of the property in favour of the judgment-debtor were marked as exhibits in the suit and they stand in his name. No evidence has been placed before the Executing Court to show that the properties were purchased by Muthusamy Chettiar. In the absence of any evidence, the Executing Court, in my considered opinion, was wrong in concluding that the decree holder has admitted that the respondent/judgment debtor has got only 1/8th share in the property. Having not taken the defence in the suit, which was laid for specific performance, I do not think, it is open to the respondent now to contend that he is not the owner of the property in the execution proceeding. Apart from the above the plea that the property was purchased by Muthusamy Chettiar, has not been established by placing any tangible evidence before the Court. Hence, the Civil Revision Petition is allowed. The order of the Executing Court is set aside and the Execution



Petition is remitted back to the trial Court to proceed further in accordance with law. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)

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To
The Subordinate Court,
Pattukkottai.

Copy to

The Section Officer
VR Section,
Madurai Bench of Madras High Court,
Madurai-2 copies

+1 CC to Mr.R.P.RAMACHANDRAN, Advocate (SR-103084[F] dated 03/12/2019)

C.R.P. (MD)No.965 of 2013(NPD)
02.12.2019

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