



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.12.2018

PRONOUNCED ON : 30.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.257 of 2018

and

C.M.P. (MD) .Nos.3744 and 11120 of 2018

R.Krsna Murtii

... Appellant /
1st respondent /Party in Person/
Decree holder/Plaintiff

Vs.

1.N.Dharshinee

... 1st respondent /
Petitioner/2nd Defendant/
3rd party

2.K.Sridhar Rao

... 2nd respondent/
2nd respondent/
Judgment debtor/Defendant

PRAYER:- Appeal filed under Order 43 Rule 1 of the Civil Procedure Code, against the order, dated 02.03.2018, passed in E.A.No.59 of 2017 in E.P.No.617 of 2014 in O.S.No.111 of 2014 by the I-Additional District Judge (PCR), Trichy.

For appellant : Mr.R.Krsna Murtii
(Party-in-person)

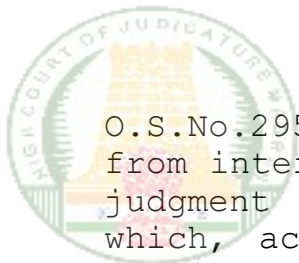
For 1st respondent : Mr.S.Vinod Sathya Lazav

JUDGMENT

This appeal has been filed by the appellant/decreed holder against the order, dated 02.03.2018, passed in E.A.No.59 of 2017 in E.P.No.617 of 2014 in O.S.No.111 of 2014, whereby and whereunder the Court below allowed the petition filed by the first respondent / 3rd party to raise the attachment order in the execution petition.

2. The brief facts which are necessary for the disposal of this appeal are as follows:

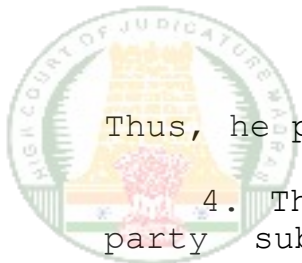
(a). The appellant/decreed holder was the tenant under the 2nd respondent/judgment debtor. When the 2nd respondent attempted to evict the appellant illegally, the appellant had filed a suit in



O.S.No.2953 of 1996 for injunction restraining the 2nd respondent from interfering his possession except under due process of law. By judgment dated 18.11.1998, the trial Court decreed the suit, for which, according to the appellant, execution proceeding is still pending. In the meantime, the Rent Control Proceedings initiated by the 2nd respondent was dismissed. According to the appellant, subsequently, with the aid of rowdy elements, the 2nd respondent had forcibly dispossessed him and caused for damages and theft of his properties, for which, he initiated criminal proceedings. On 11.05.2007, the 2nd respondent herein sold the suit property to the 1st respondent herein. Thereafter, the appellant filed O.S.No.111 of 2014 against the 2nd respondent claiming Rs.27 lakhs with interest at 18% p.a. as compensation for mental agony caused by forcible dispossession, damages caused to his car, theft of properties and for costs of the suit. The 2nd respondent remained *ex parte* before the Court below. The trial Court partly decreed the suit, thereby the 2nd respondent was directed to pay Rs.12,69,700/- as damages to the appellant together with interest at 6% p.a. Thereafter, the appellant filed execution petition.

(b) For impleading the 1st respondent / 3rd party, who is the subsequent purchaser of the property where the appellant was residing, the appellant filed E.A.No.142 of 2014 in the execution proceedings and the same was dismissed by the Court below. Aggrieved by the same, the appellant filed a civil revision petition before this Court and the same was allowed by this Court on 16.06.2016, thereby the 1st respondent/3rd party was impleaded as 2nd respondent in the execution proceedings. In the meantime, the appellant obtained an order of attachment of the disputed property on 08.09.2015. Subsequently, the 1st respondent through her Power Agent filed E.A.No.59 of 2017 seeking to raise attachment order against the property in dispute. The Court below has allowed the said petition and raised the property attached holding that even before the initiation of the suit for damages, the property has been purchased by the 1st respondent/3rd party. Aggrieved by the same, the appellant / decree holder filed this appeal.

3. The appellant, who appeared in-person, mainly contended that the first respondent/3rd party had purchased the property from the 2nd respondent/judgment debtor in collusion, that too during the pendency of the execution proceedings in E.P.No.889 of 2004 in O.S.No.2953 of 1996 and other proceedings in respect of the property in question, and therefore, the purchase made by the first respondent/3rd party is hit by Sections 52 and 53 of the Transfer of Property Act. He would further submit that the first respondent / 3rd party purposefully evaded notices in the execution proceedings and only after the order of attachment, she approached the Court. The attachment order was passed on 16.09.2015, but the petition raising objection against the attachment has been filed only on 29.08.2017 i.e., with the enormous delay of 667 days and therefore, that petition is barred by limitation. The Court below, without considering the said aspects, has erroneously allowed the petition.



Thus, he prayed to set aside the impugned order.

4. The learned counsel appearing for the first respondent/3rd party submitted that there is no decree against the first respondent in any suits and further, the first respondent purchased the property in dispute even before filing of the suit for damages and therefore, the purchase made by the first respondent is not a *lis pendens* purchase. He would further submit that the order of attachment has been passed behind the back of the first respondent. When the order passed by the Court below was affixed on the door of her house, the first respondent came to know about that order. Though the first respondent attempted to file a petition against the order of attachment, it was returned by the Court below stating that already a civil revision petition filed by the appellant in respect of impleading her, is pending. Subsequently, the first respondent filed E.A.No.59 of 2017 seeking to raise the attachment and the Court below has rightly allowed the petition filed by the first respondent and the same need not be interfered with. Thus, he prayed to dismiss this appeal.

5. It is seen that the notices sent to the 2nd respondent/judgment debtor returned with an endorsement "insufficient address". Though the appellant filed C.M.P.(MD). No.11120 of 2018 seeking to order for paper publication in respect of the 2nd respondent, the appellant stated that the 2nd respondent remained absent before the Court below and he is not a necessary party to decide this appeal. Considering the said submission of the appellant, notice to the 2nd respondent is dispensed with. Heard the appellant/party-in-person and the learned counsel appearing for the first respondent / 3rd party and perused the records carefully.

6. The suit in O.S.No.2953 of 1996 has been filed by the appellant for injunction restraining the 2nd respondent from interfering his possession except under due process of law and the same was decreed. The present suit in O.S.No.111 of 2014 has been filed by the appellant claiming damages against the 2nd respondent. Admittedly, the first respondent is not a party to both the suits ie., O.S.No.2953 of 1996 and O.S.No.111 of 2014. There is no decree passed against her. Though the appellant has stated that the property in dispute has been purchased by the first respondent/3rd party during the pendency of the execution proceedings in O.S.No.2953 of 1996, the fact remains that till date no attachment order is passed in respect of the property in dispute in the said proceedings and the said execution petition is still pending. It is always open to the first respondent/decreed holder to raise the issue of *lis pendens* purchase in the said execution proceedings ie. E.P.No.889 of 2004 and not in the present proceedings. The first respondent/3rd party has purchased the property in dispute even before filing of the suit in O.S.No.111 of 2014 ie. on 11.05.2007 for a valuable sale consideration and therefore, the purchase of the first respondent/3rd party cannot be termed as *lis pendens* purchase, so far as the present proceeding is concerned.



7. Though it is contended by the appellant that the first respondent/3rd party has purposefully evaded notices and filed the petition seeking to raise attachment belatedly, under Order 21 Rule 58 of the Civil Procedure Code, there is no period of limitation prescribed for filing such petition. As per Order 21 Rule 58 C.P.C., the claim or objection to the attachment of the property can be entertained, if the property attached has not been sold. Here, in this case, the first respondent/3rd party filed the petition raising objections to attachment even before selling the property and therefore, it has been rightly entertained by the Court below. More over, as rightly stated by the Court below, merely because the first respondent evaded notices on several occasions, the right of the first respondent to file the petition seeking to raise attachment, cannot be denied.

8. A perusal of the judgment in O.S.No.111 of 2014 would show that in the plaint itself, the appellant admitted that the first respondent has purchased the property on 11.05.2007 itself. Knowing fully well that the the first respondent has purchased the said property even before filing of the suit in O.S.No.111 of 2014 and the 2nd respondent / judgment debtor has no right over the said property on the date of filing of the suit, the appellant has unnecessary obtained an order attaching the property in dispute. The Court below has rightly raised the attachment order in respect of the disputed property. This Court does not find any reason to interfere with the order passed by the Court below.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

gcg

To

1.The First Additional District Judge (PCR),
Tiruchirapalli.



COPY TO

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

+1CC TO MR.S.VINOD SATHYA LAZAR, Advocate Sr. No. 64555

Judgment in
C.M.A (MD) .No.257 of 2018
30.04.2019

GKG (CO)
TR (20.05.2019) 5P 5C