

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.09.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.803 of 2020
in
O.A.No.4405 of 2016
in
C.S.No.606 of 2016

Mir Hushnara Khatoon

...applicant

Vs.

1.M/s.Abraaz Malaspina Soles Pvt. Ltd.,
Rep by its Director,
Reg. Office at
No.165, Perambur Barracks Road,
Eden Plaza, 3rd Floor,
Purasaiwakkam, Chennai

2.M/s.G.A.Jolli,
Rep. by its Partner
No.96/1A, M.G.R.Road,
Nagalkeni, Chrompet,
Chennai – 600 044.

...respondents

Prayer: Judges Summons filed under Order XIV Rule 8 of Original Side Rules read with Section 151 of the CPC to pass an order to raise the attachment in A.No.4405 of 2016 in C.S.No.606 of 2016 dated 28.07.2017.

For Applicant : Mr.D.Kanagasundaram

For Respondent 1 : Mr.Uttam Joseph Cheriyan

For Respondent 2 : Mr.R.Vasudevan

ORDER

The above application is filed by a third party to the suit to raise the attachment in A.No.4405 of 2016 in C.S.No.606 of 2016. The plaintiff in the suit is the 1st respondent herein and the defendant is the 2nd respondent herein. The deponent had submitted that the property which has been attached by the plaintiff / 1st respondent did not belong to the partnership firm and that the property belongs to her son Sultan Ahmed, who had purchased it in the year 1974, under a sale deed registered as Doc.No.2120

of 1974 on the file of the SRO, Pallavaram.

2. She would further submit that her son passed away in the year 2005 leaving behind him surviving his wife, four children and the deponent, his mother. She would submit that the defendant partnership firm was being run by her husband Wajid Ali in the property adjacent to the property which had now been attached. Her husband had nothing to do with the property purchased by her son. She would state that only when she had come to Chennai, she came to know that the property had been attached by the 1st respondent company for the dues of the 2nd respondent herein. She therefore sought to have the attachment raised.

3. The 1st respondent herein had filed a counter inter alia contending that the application is a collusive one and that the application has been filed after an earlier attempt by one of the partners of the 2nd respondent firm had failed. They would further state that the property which has been attached is in the hands of the legal heirs who are the partners of the 2nd respondent partnership firm and therefore the attachment was in order.

4. The documents and encumbrance certificate were produced for the scrutiny of the Court. It is clearly evident that the property which has been attached does not belong to the partnership firm. In fact, the attachment had been moved by the 1st respondent stating that the property in question belongs to the partnership firm. A perusal of the sale deed would clearly prove otherwise. Therefore, the attachment in respect of the property subject matter of A.No.4405 of 2016 has to be definitely set aside and the attachment stands raised.

5. It was informed by the learned counsel for the plaintiff / 1st respondent that the partners of the 2nd respondent firm had offered an alternate property for attachment and that he is willing to have the attachment in respect of the same. The learned counsel would inform this Court that the alternate property which is offered is the property described as the B - Schedule in the sale deed dated 09.06.2010 registered as Doc.No.6139/2010 and the property is described as follows:

“All that piece and parcel of the vacant landed

property situated at Kundrathur Village, Omprakash Nagar, Sriperumbadur Taluk, Kacheepuram District, comprised in Survey No.604, bearing Old patta No.207, Plot bearing No.11, measuring an extent of 3431 Sq.ft. and Plot No.12, measuring an extent of 3494.5 Sq.ft totally measuring an extent of 6925.5 Sq.ft. only land being.”

6. The learned counsel for the defendant / 2nd respondent firm also has no objection to the same. However, considering that the attachment was sought for a different property, this Court has directed the learned counsel for the plaintiff / 1st respondent to file a memo to the effect that they are willing to take alternate property in the place of the property which is the subject matter of A.No.4405 of 2016.

7. The application in A.No.803 of 2019 is allowed and the attachment in respect of the property subject matter of A.No.4405 of 2016 is raised.

8.For filing memo post the matter on 10.09.2020.

07.09.2020

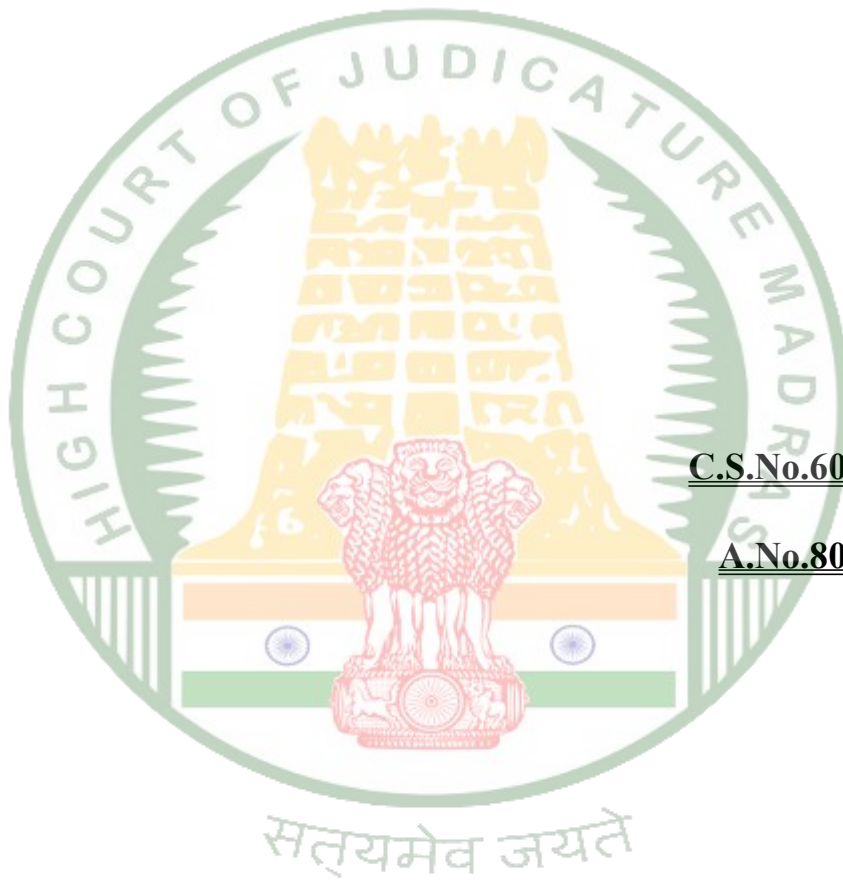
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