

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 03RD DAY OF NOVEMBER 2020

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A.Nos.2505, 2506 of 2020
in
E.P.S.R.No.18064 of 2020

M/S.SHRI VIJAYA RGGLV INDANE GAS SERVICES,
Represented by its Partner J.Sathyaraj,
Indane Distributor, 2/216, East Street,
Mugaiyur, Villupuram District. ..Applicant/Decree Holder/Claimant
in both applications

-Vs-

THE CHIEF GENERAL MANAGER (LPG),
Tamilnadu State Office,
Indian Oil Corporation Limited,
Marketing Division,
Southern Region, Indian Oil Bhavan,
139, Mahatma Gandhi Road,
Nungambakkam High Road,
Chennai – 34. ..Respondent/Judgement Debtor/Respondent
in both applications

A.No.2505 of 2020:

This application praying that this Hon'ble court be pleased to set
aside the order dated 05/10/2020 made in E.P.D.NO.18064 of 2020 in
O.P.No.1119/2018 and A.Nos.9710 and 66/19 and number the Execution

Grounds

1. The Learned Master erred in rejecting the Execution Petition as not maintainable, on the ground that the applicant is only to prove the title of the judgement debtor in respect of the property sought to be attached.
2. The Learned Master ought to have seen that the Extract of Town Survey Land Register (Digital Copy of the Patta) Certifies the possession of the Judgement Debtor in respect of the property sought to be attached in the Execution Petition.
3. The Learned Master ought to have seen that there is no necessity on the part of the applicant to prove the title at the initial stage of admitting the E.P. as the same would arise only at the time of filing sale papers under Order 39 Rule 15 and 16 of O.S.Rules read with Order 21 Rule 35 or 36 and Rule 95 or 96 of Civil Procedure code respectively.
4. The Learned Master failed to note that the requirements contemplated under Order 38 Rule 2 of CPC stipulates filing of Encumbrance certificate for the last 12 years in respect of the property sought to be attached.

A.No.2506 of 2020:

This application praying that this Hon'ble court be pleased to dispense with the issue of notice to the Judgement Debtor.

These Applications coming on this day before this court for hearing the court made the following order:

The application in A.No.2505 of 2020 has been filed to set aside the order passed by the Master in E.P.(D) No.18064 of 2020 dated 05.10.2020.

2. The applicant, who is the Decree Holder in the Award passed in O.P.No.1119 of 2018 dated 31.12.2019 has filed E.P.D.No.18064 of 2020 before the Master. The above execution petition was dismissed on the ground that the applicant has to prove the ownership of the property. It is an admitted fact that the Judgment Debtor namely the Chief General Manager (LPG), Tamil Nadu State Office, Indian Oil Corporation Limited has suffered the award dated 31.12.2019 passed in O.P.No.1119 of 2018 and in order to enforce the Award, the applicant herein has filed the above Execution Petition. The Master, in fact, has not numbered the execution petition on the ground that original title deeds of the property were not produced.

3. I am at loss to understand as to how the Decree Holder is expected to produce the title deeds of the Judgment Debtor, whereas, the documents produced by the Decree Holder namely revenue records, Adangal, Endumbrance Certificate and other remaining records prima facie show that the Judgment Debtor is the real owner of the property. As long as there is no dispute at the stage of filing of execution petition, the Master ought to have numbered the execution petition and it is for the Judgement Debtor or some third party, who is having interest over the suit property to raise the issue of title. As long as there is no dispute and the documents produced by the Decree Holder Prima Facie show that the title of the property vested in the name of the Judgment Debtor, the execution petition cannot be returned as not maintainable.

4. Accordingly, the order passed by the Master in E.P.(D) No.18064 of 2020 dated 05.10.2020 is set aside. The Master is directed to number the execution petition and proceed as per law. Consequently, A.No.2506 of 2020 is closed.

Sd/-N.S.K.J.
03.11.2020

//Certified to be a true copy//
Dated this the day of 2020.

S.U./09.11.2020

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.