



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)No.1817 of 2011

and

M.P. (MD)No.1 of 2011

1.Subramanian (died)

2.S.Kumar

3.Latha

(Petitioners 2 and 3 are brought on record
as LR's of the deceased sole petitioner vide
order dated 01.10.2019 in CMP(MD)Nos.8996 to
8998 of 2019)

... Petitioners

Vs.

1.Chellapandi (Died)

2.Saroja

(Second Respondent is brought on record
as LR's of the deceased sole respondent vide
order dated 01.10.2019 in CMP(MD)Nos.8996 to
8998 of 2019)

... Respondents

PRAYER: This Petition is filed under Section 115 of Civil Procedure Code, against the order dated 20.08.2010, made in E.A.No.365 of 2009 in E.P.No.28 of 2008 in O.S.No.60 of 2007 on the file of the Sub Court, Sankarankoil.

For Petitioner : Mr.Sri.Ramesh@ Ramiah

For Respondents : No Appearance

O R D E R

The Judgment debtor has filed petition under Section 60(1)(c) of the Code of Civil Procedure seeking to raise the attachment of the property on the ground that he is an agricultural labourer and



the property that is said to be attached is a residential house belonging to him. Claiming that a residential house belonging to an agricultural labourer is exempted from attachment under Section 60(1)(c) of the Code of Civil Procedure, the petitioner sought for raising the attachment. The same was resisted by the respondent contending that the petitioner is not entitled to the benefits of Section 60(1)(c) and he is not an agricultural labourer and he was working in Coimbatore. The trial Court on a consideration of the evidence on record, concluded that the claim of the petitioner that he is an agricultural labourer and as such the house occupied by him is exemption of attachment has not been established. The trial Court also found that the income certificate produced by the petitioner is unreliable inasmuch as the basis of the said certificate issued by the Tahsildar is not explained before the Court. The Executing Court also relied upon the Judgment in **PARASUIRE NARASIMA RAO v. NUNE PANDURENGA RAO**, reported in **1994 (20 Civil Law Judgment 208 (AP))**, to conclude that in order to exempt from attachment under Section 60(1)(c) of the Code of Civil Procedure, it should be shown that the house actually occupied for the purpose of cultivating the land. In the absence of such evidence, the exemption under Section 60(1)(c) of CPC, cannot be availed of by the Judgment debtor. Aggrieved, the petitioner has come up with this Civil Revision Petition.

2.I have heard Mr.Ramesh @ Ramiah, learned counsel appearing for the petitioner.

3.Though the learned counsel for the petitioner would vehemently contend that the Executing Court was not right in dismissing the application on the ground that the petitioner has not established that he is an agricultural labourer and the Executing Court also erred in disbelieving Ex.P1 in the absence of any contra evidence. I am unable to accept the said contention of the learned counsel for the petitioner. Once the person claims exemption under Section 60(1)(c) of the Code of Civil Procedure, it is for him to establish that he would fall within any one of the exemptions enumerated therein. The Executing Court has examined the evidence and found that the claim of the petitioner has not been established through reliable and tangible evidence. I do not think that I can interfere with the said conclusion, particularly, in a revision under Section 115 of CPC. Interference in revision is possible only when there is a material irregularity or failure to exercise jurisdiction.

4.It now turns out that the petitioner / judgment debtor is no more and the legal heirs are brought on record. There is a change of scenario. The exemption available under Section 60(1)(c) of the Code of Civil Procedure to an individual can not be available to the legal heirs also. Hence, looking at from any angle, the order of the trial Court does not suffer from any material irregularity or wrongful exercise of jurisdiction. Hence, the Civil Revision



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Petition fails and it is accordingly dismissed. It is open to the legal heirs of the judgment debtor to take whatever proceedings that may be open to them to attack the sale that has taken place in the interregnum. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Sub Judge, Sankarankoil.

+1 CC to M/s.S.RAMESH@RAMESH, Advocate (SR-510[F] 07/01/2020)

C.R.P. (MD)No.1817 of 2011

and

M.P. (MD)No.1 of 2011

03.01.2019

rj2

SDS(24.01.2020) 3P-3C