



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.R.P(MD)No.2063 of 2010

R.Muthulakshmi

... Petitioner/Petitioner/
Claimant/3rd Party

Vs.

S.Kuppusamy

(Respondent's name is substituted vide
court order dated 9.12.2016 made in M.P(MD)NO.1 of 2012
in C.R.P(MD)No.2063 of 2010)

... Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 28.07.2010 in I.A.NO.236 of 2010 in I.A.No.91 of 2002 in I.A. 546 of 2001 in O.S.No.520 of 2001 on the file of the Additional Subordinate Judge, Dindigul.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondent : No appearance

O R D E R

This Civil Revision Petition is directed against the order passed by the learned Additional Sub Judge, Dindigul, dated 28.07.2010 in I.A.No.236 of 2010.

2. The said application in I.A.No.236 of 2010 was filed by the petitioner seeking to raise an attachment made in I.A.No.546 of 2001 in O.S.No.520 of 2001.

3. The facts lead to filing of the petition in I.A.No.236 of 2010 are as follows:



An interim order of attachment was passed in I.A. No.546 of 2001 in O.S.No.520 of 2001. In the said suit, the petitioner filed an application to raise the order of attachment making a claim that she has purchased property on 17.11.2000 and as such attachment made after the sale in favour of the petitioner cannot be sustained. The said petition was allowed for non-filing of counter on 05.10.2005. However, the order did not direct raising of attachment. Since the attachment continued to be reflected in encumbrance certificate, the petitioner has come forward with I.A.No.236 of 2010 seeking an order specifically raising attachment. This petition was resisted on the ground that the respondent/plaintiff had already filed an application to set aside the ex-parte order made in I.A.No.91 of 2002.

4. The learned Additional Subordinate Judge, Dindigul, by order dated 28.07.2010 rejected the application filed for setting aside the ex-parte order made in I.A.No.91 of 2002. He however on the same date, dismissed the application in I.A.No.236 of 2010 also, on the ground that the claim petition has not been decided on merits. It is this order that is challenged in this Civil Revision Petition.

5. I have heard Mr.Lakshmi Shankar, learned counsel appearing for the petitioner. The respondent, though served, has not appeared either in person or through counsel duly instructed.

6. Once claim petition has been allowed by order dated 05.10.2005, attachment before judgment stands automatically vacated. It is also seen from the orders passed in an unnumbered Interlocutory Application that the court has refused to set aside the order dated 05.10.2005 made in I.A.No.91 of 2002. Once the application to raise attachment has been allowed, the consequences should also follow. The prayer in I.A.No.236 of 2010 is essentially consequential prayer, which stems out of the order made on 05.10.2005 in I.A.No.91 of 2002.

7. Therefore, the learned Additional Subordinate Judge, Dindigul, in my considered opinion, was not right in dismissing the application on the ground that the Claim Petition has not been decided on merits. Ex-parte order is also legal and enforceable order. Hence, I find that the order passed by the learned Additional Subordinate Judge, Dindigul, dated 28.07.2010 in I.A.No.236 of 2010 is materially irregular and liable to be interfered with. Accordingly, the order dated 28.07.2010 is set aside. I.A.No.236 of 2010 in I.A.No.91 of 2002 in I.A. 546 of 2001 in O.S.No.520 of 2001 on the file of the Additional Subordinate Judge, Dindigul, will stand allowed.



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8. In fine, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Additional Subordinate Judge,
Dindigul.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-4465[F] dated
03/02/2020)

C.R.P (MD)No.2063 of 2010
31.01.2020

CM

SDS (19.02.2020) 3P-3C