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C.R.P.(MD)No.2417 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) (MD)No.2417 of 2013

and

M.P. (MD)No.1 of 2013

Saraswathi

... Petitioner/1st respondent/
1st respondent / petitioner

Vs.

1.Tamilarasan

... 1st respondent / 1st respondent /
petitioner / claim petitioner

2.K.K.Senthilnathan

... 2nd respondent / 2nd respondent /
2nd respondent / respondent

PRAYER: This Petition is filed under Section 115 of Civil Procedure Code against the order and decreetal order dated 30.08.2013 made in C.M.A.No.19 of 2011 on the file of District Court, Karur confirming the order and decreetal order dated 31.10.2001 made in I.A.No.67 of 1999 in O.S.No.283 of 1998 on the file of Sub Court, Karur.

For Petitioner : Mr.V.Nagarajan

For R-1 : Mr.E.K.Kumaresan

For R-2 : Mr.P.Ganapathi Subramanian

O R D E R

This Civil Revision Petition has been filed against the Judgment in C.M.A.No.19 of 2011 on the file of the Principal District Court, Karur in and by which, the order in I.A.No.67 of 1999 in O.S.No.283 of 1998, dated 31.10.2001 made by the Subordinate Judge, Karur, was confirmed.

2.The said I.A.No.67 of 1999 in O.S.No.283 of 1998 was filed by the first respondent herein seeking vacate the order of attachment claiming that he has purchased the property subject matter of the attachment from the defendant in the suit, on 06.05.1998 and the sale deed came to be registered on 24.08.1998. Therefore, according to him, the order of attachment made on 06.10.1998 and effected on 09.10.1998 cannot be enforced against him.



3.The claim was resisted by the respondent / decree holder contending that the sale itself has been created only with a view to defeat the rights of the creditors. The dates are not in dispute. The suit in question was filed on 17.08.1998 and notice was ordered on the said date to the second respondent to furnish security by 31.08.1998. Since the security was not furnished attachment was ordered on 09.10.1998. An attachment shall take effect only on the date of which the order of attachment is passed, it cannot relate back, to order directing the defendants to furnish security.

4.Admittedly, the attachment order came to be passed only on 06.10.1998 and the same was effected on 09.10.1998, by that time, the defendants / borrowers had lost the right in the property. Therefore, in view of the clear language of Section 64 of the Civil Procedure Code, the attachment cannot prevail over the sale that has been effected prior to the attachment. The Courts below have considered the evidence on record and come to a conclusion that the attachment will not prevail over the sale in favour of the petitioner. An attempt was made by the learned counsel appearing for the petitioner to invoke the principles of Section 53 of the Transfer of Properties Act. Those principles under which Section 53 of the Act could be invoked only when the transfer is challenged and a suit under Section 53 of the Act is to be filed on behalf of general body of creditors. It is not shown that there are several creditors and the sale dated 06.05.1998 was with a view to defeat or delay the claim of those creditors.

5.In view of the above, I do not see any material irregularity or wrongful exercise of jurisdiction in order to enable me to interfere with the concurrent findings of the Courts below. The Civil Revision Petition therefore, fails and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rj2

To

1.The District Judge, Karur.



C.R.P.(MD)No.2417 of 2013

2.The Sub Judge, Karur.

+1 CC to Mr.V.NAGARAJAN, Advocate (SR-4142[F] dated 31/01/2020)

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and

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