



CRP.NPD.No.723/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.NPD.No.723/2019 & CMP.No.4695/2019

[Hybrid Mode]

C.V.Anandan

.. Petitioner

Vs.

1.K.V.Easwaran

2.K.V.Kamala

.. RR 1 & 2 /

judgment debtors

3.T.S.T.Anand

4.E.Rajan

5.E.Sankar

6.B.T.Rajaram

.. RR 3 to 6

Prayer:- Civil Revision Petition filed under Section 115 CPC against the fair and decreetal order dated 27.09.2018 passed in REA.No.325/2016 in REP.No.184/2007 in OS.No.246/2003 on the file of the learned I Additional Subordinate Judge, Salem.

For Petitioner : Mr.P.Mani

For RR 1, 2, 4 & 5 : Mr.M.Ashwin Kumar for

Mr.V.Raghavachari

For R3 : Mr.Mukunth for

M/s.Sarvabhauman Associates

For R6 : Mr.V.Sekar



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ORDER

- (1) This Civil Revision Petition is directed against the order in REA.No.325/2016 in REP.No.184/2007 in OS.No.246/2003 on the file of the Court of the I Additional Subordinate Judge, Salem.
- (2) The petitioner herein is the decree holder who had obtained a decree in OS.No.246/2003 against the respondents 1 and 2 herein / judgment debtors.
- (3) It is stated by the petitioner that there was an order of attachment before the judgment in IA.No.317/2003 and that the said order of attachment was in force from 07.04.2003. The suit filed by the revision petitioner was decreed on 10.07.2003. It is admitted by the petitioner that the 3rd respondent also filed a suit for recovery of money based on an equitable mortgage in OS.No.593/2003 on the file of the Sub Court, Salem. The said suit was later transferred to the Fast Track Court-I, Salem, and renumbered as OS.No.245/2004. It is also admitted that the suit was later decreed on 31.07.2008 and that in execution of the decree, the property was sold in favour of the



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6th respondent herein on 07.04.2010.

- (4) The petitioner himself admitted that the petitioner to execute the money decree, filed REP.No.184/2007 before the Sub Court, Salem. Finding that the property which is the subject matter of attachment before the judgment in his suit, had already been sold in favour of the 6th respondent herein, the petitioner filed an application in REA.No.325/2016 to implead the decree holder, judgment debtors and the auction purchaser/6th respondent in OS.No.245/2004, in the execution petition filed by the revision petitioner. That application was dismissed by the Lower Court on the ground that the petitioner cannot obtain any relief by impleading the proposed parties. Since the realisation of amount by selling the properties against respondents 1 and 2 is not possible in the present execution petition, it is held by the Lower Court that the proposed parties are neither necessary nor proper parties to decide the execution petition filed by the petitioner. Aggrieved by the same, the present Civil Revision Petition is filed by the revision petitioner herein.

- (5) The learned counsel for the petitioner submitted that the proposed



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parties are necessary and proper parties so as to execute the decree obtained by the revision petitioner against respondents 1 and 2. The learned counsel submitted that a fraud had been played on the petitioner. Indicating that the judgment debtors and the auction purchaser, namely, the 6th respondent herein, had entered into an agreement, it was stated that the petitioner is entitled to some relief in case he establishes fraud in the sale proceeding initiated by the decree holder in the other suit. The learned counsel further submitted that the Lower Court had erred in holding that the decree holder/petitioner herein cannot realise the decree amount in the present execution proceedings by impleading the proposed parties and therefore, the order of the Lower Court is not sustainable.

- (6) This Court is unable to agree with any of the submissions made by the learned counsel for the petitioner.
- (7) It may be true that the revision petitioner herein has obtained a money decree and there was an order of attachment with effect from 07.04.2003. An order of attachment pending suit though may prevail over a private sale as contemplated under Section 64 CPC, it



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will not prevail over the sale in pursuant to the execution of another decree.

- (8) It is to be noted that under Order 38 Rule 10 CPC, an attachment before judgment shall not affect the rights existing prior to attachment of persons, not parties to the suit nor bar any person holding a decree against defendant from applying for the sale of property under attachment in execution of such a decree.
- (9) In view of the specific provision under Order 38 Rule 10 CPC, this Court is unable to accept the contention that the revision petitioner can still proceed against the property which had already been sold in execution of another decree. It is admitted that the proposed parties are not parties to the order of attachment obtained by the petitioner herein. Since the attachment before judgment obtained by the petitioner is not binding on the decree holder and the auction purchaser in the subsequent proceedings, this Court is unable to find any merits in the application. The submission made by the learned counsel for the petitioner that some fraud was played against the petitioner herein may be established independently. It is not



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(10) In such circumstances, this Court finds no merits in the Civil Revision Petition.

(11) In the result, the Civil Revision Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

13.12.2021

AP
Internet : Yes

To
I Additional Subordinate Judge
Salem.



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S.S.SUNDAR, J.,

AP

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