IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.Nos.3390 & 3391 of 2017
and
M.P.Nos.21494 & 21495 of 2017

Sulthanul Arifeen ..Appellant in both CMAs

Vs.

1. Deputy Superintendent of Police,
   Economic Offences Wing II,
   Trichirapalli District.

2. Kanagajothi,
   S/o.Ramasamy Goundar ..1&2 Respondents in both CMAs

3. Santhanalakshmi
   W/o.Kanagajothi ..3rd respondent in CMA.No.3390/2017

4. Kumarajothi
   S/o.Ramasamy Goundar ..3rd respondent in CMA.No.3391/2017

COMMON PRAYER : Civil Miscellaneous Appeals are filed under Section 11 of the Tamil Nadu Protection of Interest of Depositors Act, against the order passed by the Special Court for Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act 1997, Chennai in O.A.No.15 of 2010 & O.A.No.16 of 2010 dated 22.08.2017.

For Appellant : Mr.R.N.Amarnath

For Respondents
For R1 : Mr.Y.T.Aravind Gosh
Additional Government Pleader

For R2 & R3 : No appearance

COMMON JUDGMENT

The appellant herein is the 3rd respondent in O.A.Nos.15 & 16 of 2020 filed by the 1st respondent under Section 8 of the Tamil Nadu Protection of Interest of Depositors (In

Financial Establishments) Act 1997, (TNPID), praying to attach the properties as described in the schedule appended to the application against the 2nd , 3rd and 4th respondents herein.

2. The appellant along with other respondents 2, 3 & 4 submitted their counter objections. The TNPID Court allowed the said applications concluding that the appellant is not a bona fide purchaser of the properties and ordered to attach the properties as shown in the Schedule to the petition. Aggrieved by the order, the appellant / 3rd respondent has preferred these appeals.

3. The question of law that arises for consideration is as to “whether the TNPID Court erred in attaching the properties of the appellant by erroneously concluding that he is not a bona fide purchaser?”.

4. The facts of the case reveal that the 2nd respondent herein Kanagajothi and his wife / 3rd respondent herein along with two others were running a chit fund in the name and style of “Jothi Chit Fund” at Vizhuntharnavadi, Vedharanyam, from the year 2001 onwards. Several depositors lodged complaints against the 2nd and 3rd respondents alleging default in paying back the deposited amount. The total number of depositors was 1554 and the defaulted amount was around Rs.8,88,66,990/- and the case was registered in Crime No. 2 of 2007 under Section 5 of TNPID Act. During the course of investigation, it was found that the petition mentioned properties were purchased in the year 2001, 2003 and 2004 after the establishment of 'Jothi Chit fund' and the said properties were transferred by the 2nd respondent in the year 2006 in favour of the 3rd respondent for a sale consideration mentioned in the sale deed i.e., Rs.2,49,000/- but actual market value was Rs.2 crores. The investigation also reveals that no original consideration was passed and the consideration shown in the sale deed is also not correct. The 2nd and 3rd respondents herein, with mala fide intention, had transferred the petition mentioned properties in favour of the appellant and the entire transaction was made with a mala fide intention.

5. The total amount paid in respect of the sale deeds in Doc.Nos.356/2006 and 357/2006 was Rs.72 lakhs. Even on the date of alleged sale transaction, the depositors have made frequent demands to receive the interest or the principal from the concerned financial establishment, but to defraud the claim of the said depositors, with a mala fide intention, the 2nd and 3rd respondents along with the appellant, transferred the properties without mentioning the original sale consideration.

6. Furthermore, the amount already recovered from the

accused/ 2nd and 3rd respondent herein was not sufficient to repay the amount to the depositors and hence the properties stand in the name of the appellant also needed to be attached, which is tainted with mala fide transfer. Hence, the 1st respondent filed an application under Section 8 of TNPID Act.

7. The seller of the property / 2nd respondent herein and the appellant (purchaser of the property) submitted their counter objections. As per the contention of the 2nd respondent, she is not a partner of the Chit fund. She purchased the property by her own source and sold the property to the appellant, based upon the guideline value prevailing at that time. As per the agreement between the parties, the land had to be developed by levelling and fencing, thereby Rs.72 lakhs had been received by her for that property.

8. The appellant herein also admitted the purchase of properties under two sale deeds in Doc.Nos. 356/2006 and 357/2006 in the year 2006, based upon the guideline value. As per the agreement between the parties, he paid Rs.72 lakhs as a sale consideration to the 3rd respondent herein. The appellant also submitted that he purchased property in good faith after verifying all the documents and paid the entire sale consideration as per the market value negotiated and fixed in the sale agreement, and all those documents were shown to the investigating officer Mr.Anarkali Begum, who investigated the case. So, the appellant claimed himself as a bona fide purchaser of the properties.

9. During the enquiry, on the side of the Investigating Authority P.W.1 was examined, and Ex.P.1 to Ex.P.12 were marked. On the side of the appellant, he examined himself as R.W.1 and Canara Bank statement of account marked as Ex.R.1

10. On considering all the oral and documentary evidence, the TNPID Court allowed the application by concluding that the transaction between the appellant and the respondent 2 & 3 herein are made with mala-fide intention, thereby the properties are liable to be attached. Aggrieved by the order, the appellant / purchaser of the property / 3rd respondent in the application has preferred this appeal.

11. At the time of the arguments, the learned counsel for the appellant submitted that the appellant was not aware of the chit transaction, which was carried out by the husband of the vendor/2nd respondent. Since the properties were standing in the name of his wife/3rd respondent herein, he purchased property through her Power Agent on 23.03.2006 based on the sale deeds in Doc. Nos.356/2006 & 357/2006.

12. The further contention of the appellant is that, based upon the guideline value prevailing at that time, he purchased the properties. Since, at that time, the guideline value of the property is Rs.3,10,590/-, the properties were sold to him for Rs.2,49,000/- by his vendor and as per the sale agreement with his vendor, he undertook to level the property and also agreed to put a fence in order to run a service station in that property. Thereafter, he paid Rs.70 lakhs in cash to his vendor / 3rd respondent herein for the entire development of the property.

13. At this juncture, the learned Additional Government Pleader appearing for the 1st respondent submitted that in respect of the properties concerned in O.A.No.15 & 16 of 2010, total sale consideration of Rs.72 lakhs was paid by the appellant, but a meager amount of Rs.2,49,000/- was mentioned in the sale deed, which itself proves the mala-fide intention between the parties.

14. On considering that it is an admitted fact that in the sale deed, the value of the properties is mentioned as Rs.2,49,000/-. But, on a perusal of the records, it is clear that there was no mention in the alleged sale agreement entered into between the parties with regard to the developing, leveling and fencing of the properties. Admittedly, the vendor of the 3rd respondent herein / accused purchased the properties in the year 2003, after formation of the chit fund. Admittedly, the 3rd respondent is the wife of the 2nd respondent. Both the persons were shown as accused in Crime No.2 of 2007.

15. As per the contention of the 3rd respondent / wife of the 2nd respondent, she purchased the properties out of her own source and also by selling her jewels. But, to support this fact, there is no material evidence available on the side of the 3rd respondent. Furthermore, she, along with her husband / A1, was residing together and she is also enjoying the benefits arising out of the said chit fund. So, there is no proof about the separate source of income of the 3rd respondent. Thus, the investigating agency prima-facie established that the properties standing in the name of the 3rd respondent, were purchased in the year 2003 after formation of the chit fund and also by utilising the amount collected from the depositors. Subsequently, in the year 2006, when the trouble started between the depositors, the accused executed sale deed was on 23.03.2006 between herself and the appellant, though the amount mentioned in the sale deed is only Rs.2,49,000/- but the 3rd respondent herein / A2 received total sale consideration of Rs.72 lakhs.

16. According to the appellant, as per the sale agreement, he paid Rs.70 lakhs after the property was developed. If really

the appellant is a bona-fide purchaser, he ought to have mentioned the original sale consideration in the sale deed. At the time of the arguments, the learned counsel for the appellant submitted that, as per the valid terms between the parties, he paid Rs.70 lakhs to his vendor in cash. But it is settled position that if the value of the property goes more than Rs.100, the document requires registration. Here, the appellant paid Rs.70 lakhs as a part of the sale consideration in cash to the 3rd respondent, but this fact is suppressed while registering the sale deed. Even in the counter affidavit and in the evidence, the appellant categorically admitted that he paid Rs.70 lakhs as a part of the sale consideration. In the proof affidavit filed by the appellant, at paragraph in page no.5, he admits as follows:

> "The entire sale consideration was received by the 2nd respondent in the presence of the 1st respondent and his brother Kumarajothi. All the payments were made in the presence of first respondent, the second respondent and the 1st respondent's brother Kumarajothi. All the amounts were drawn from by NRI account. The purchase of the property by me was in good faith after verifying all the documents and paying the entire sale consideration as per the market value negotiated and fixed as stated above."

17. The above admission itself is the best evidence, which does not require any proof. The conduct of the parties itself prima-facie proves that with the mala-fide intention to cheat the depositors, the said sale transaction was held between the parties without even mentioning the real sale consideration in the sale deed.

18. Apart from that, the 3rd respondent who received Rs.72 lakhs as sale consideration had not utilised the same to repay the deposited amount to the poor depositors. Even in the year 2006, trouble arose between the depositors and the vendor. In order to cheat the depositors' claim, she along with the appellant, entered into the sale agreement by suppressing the real value of the property as well as the real sale consideration, which are sufficient to conclude that the entire sale transactions were done with mala- fide intention. So, the TNPID Court rightly allowed the application and attached the properties which requires no interference by this Court.

19. The learned counsel for the appellant submits that no notice was properly given to the appellant before initiating the proceedings. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India, in the case of Aslam Mohammad Merchant v. Competent Authority and others, reported in (2008) 14 SCC 186, which reads as follows:-

"B.Administsrative Law - Natural justice - Audi alteram partem - Right to hearing - Notice/show-cause - where the show-cause notice is found to be illegal, the same would vitiate all subsequent proceedings."

20. Yet another judgment relied on by the learned counsel for the appellant is C.Sukumaran 2.S.Manikandan v. The Competent Authority and District Revenue Officer, Thiruvallur and others reported in 2012 SCC Online Mad 4472, wherein it was held as follows:-

"Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (T.N.Act 44 of 1997), Section 7,8 & 9 - Attachment of Property - Opportunity of concerned - Property purchased by petitioners from Financial Establishment much before order of Interim Attachment of property was made - Opportunity of hearing not given to petitioners either at time of Interim Attachment or at stage when order was made absolute - In such circumstances, right under Section 9 to give security in lieu of attachment ought to be given to petitioners - order of Lower Court dismissing Application of Petitioner under Section 9 set aside - court directed to number Application of petitioner and to deal with same in accordance with observations made in Revision."

21. Based upon the above judgments, the learned counsel for the appellant submitted that as to before attach his property, the investigating agency has not issued any notice, thereby natural justice was violated and that the order of attachment itself is invalid under law.

22. By way of reply, the learned Additional Government Pleader submitted that even in the counter affidavit filed by the appellant before the TNPID Court he himself admitted that he had shown all the documents to the investigation officer, at the time of investigation. A perusal of the counter affidavit filed by the appellant in O.A.Nos.15 & 16 of 2010 shows that he had stated in paragraph 4 as follows:-

" The agreement for sale entered into between my power agent on my behalf and the first respondent was shown to Mrs.Anarkali Begum, then the Deputy Superintendent of Police who investigated the case".

23. So, the appellant had very well known about the investigation and he also shown all his documents to the investigating agencies, which itself sufficient to conclude that he was enquired by the Investigating Officer and notice was

issued before the investigation. Therefore, the authorities relied upon by the learned counsel for the appellant, are not supporting his contention.

24. Furthermore, the transaction is tainted with mala-fide intention and the defence taken by the appellant is not genuine one, but to cheat the depositors the real sale consideration between the parties was suppressed and the conduct of the parties also proved the mala-fide intention.

25. Accordingly, the question of law is answered against the appellant herein and the order passed by the TNPID Court in O.A.Nos.15 & 16 of 2010 dated 22.08.2017 is confirmed. Accordingly, these Civil Miscellaneous Appeals are dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge,
   Special Court under TNPID Act 1997,
   Chennai - 104.

+2cc to Mr.R.N.Amarnath, Advocate, S.R.No.19512 & 19513
+1cc to the Special Government Pleader, S.R.No.19231

C.M.A.Nos.3390 and 3391 of 2017
and
M.P.Nos.21494 & 21495 of 2017

CP(CO)
RGA(13/08/2021)