



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2021

CORAM:

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

C.M.S.A. (MD) No.14 of 2007

WEB COPY

B.Ramathilagam

... Appellant/1st Respondent

versus

1. E.Esakkimuthu

...1st Respondent/Appellant

2. Smt.Thangam

3.V.Thirikooda Sundaram @ V.T.Sundaram... 2nd and 3rd Respondents/
2nd and 3rd Respondents

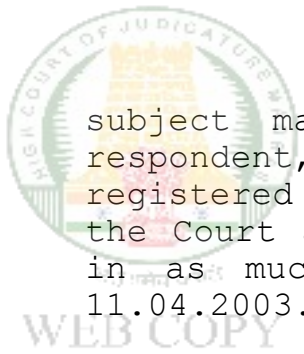
CMSA filed under Section 100 read with 43 of C.P.C. against the Judgment and Decree dated 22.01.2007 made in C.M.A.No.27 of 2005 on the file of the I Additional District Court, Tirunelveli dated 22.01.2007 reversing the Judgment and Decree passed in E.A.No.1482 of 2004 in E.A.No.1456 of 2004 in E.P.No.46 of 2004 in O.S.No.314 of 2001 on the file of Principal Subordinate Judge, Tirunelveli dated 10.06.2005.

For Appellant : Mr.M.P.Senthil
For Respondents : Mr.Anand C.Rajesh for R1
Mr.J.Jeyakumar for R2
R3-Dispensed with.

JUDGMENT

This appeal is directed against the Judgment and Decree of the learned First Additional District Judge, Tirunelveli, made in C.M.A.No.27 of 2005, dated 22.01.2007. The said appeal arose out of the proceedings launched by the first respondent seeking raising of attachment made in execution of the decree in O.S.No.314 of 2001.

2. The said suit was filed by the second respondent herein seeking recovery of a sum of Rs.64,900/-. The said suit came to be decreed ex parte on 10th October 2003. The decree was put in execution in E.P.No.46 of 2004. The property was sold in execution of the decree to the appellant herein on 06.08.2004. The sale was confirmed on 11.10.2004. Even during the pendency of the suit, an application in I.A.No.497 of 2001 was filed and an order of attachment before the Judgment was made and the same was effected on 06.10.2002. The attachment was also made absolute on 31.12.2002. The appellant attempted to take possession of the property pursuant to the purchase made in the Court auction. The first respondent herein filed an application in E.A.No.1482 of 2004 under Order 21 Rule 97 of C.P.C. claiming that he has purchased the property

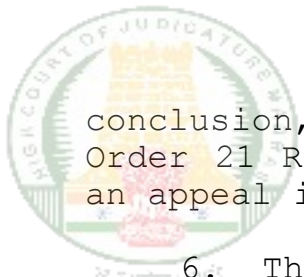


subject matter of the sale from the power agent of the 3rd respondent, namely, the Judgment debtor on 11.04.2003 under duly registered sale deed. Therefore, according to the 3rd respondent, the Court auction sale will not confer any right on the appellant, in as much as the property stood transferred to him even on 11.04.2003.

3. This application was resisted by the appellant/auction purchaser contending that inasmuch as the property was attached on 06.10.2002 and the attachment was made absolute on 31.12.2002, any sale thereafter would be subject to the attachment in terms of Section 64 of C.P.C. It was also contended that the sale being subsequent to the order of attachment, it will not affect the right of the decree holder or the auction purchaser.

4. At trial, the first respondent, namely, the petitioner, before the trial Court was examined as P.W.1 and one Shankar was examined as P.W.2. Exs.P1 to P9 were marked. On the side of the respondents, Exs.R1 was marked.

5. The learned trial Judge, upon consideration of oral and documentary evidence, concluded that the attachment would prevail over the sale. Though two documents were pressed into service by the petitioner/first respondent herein to contend that he had entered into agreements of sale with the 3rd respondent, owner of the property, on 27.12.1998 and 31.08.2001 and the sale was pursuant to the said agreements, the said plea was rejected by the trial Court, pointing out that certain discrepancies in the transaction. As regards Ex.P3, dated 31.08.2001 is concerned, the said document ought to have been straight away rejected, since it is styled as a sale deed and recitals therein also show that it is a sale deed. Though it is written on Rs.20 stamp paper, the same is not attested as required under law. As regards Ex.P2, the trial Court pointed out that Ex.P2 reveals that total consideration that was agreed to was Rs.1,75,000/-. It is also recited therein that the purchaser has paid an advance of Rs.50,001/- on that day and the balance is payable within six months from the date of the vendor clearing the loan availed by him. The sale deed, namely Ex.P8, is on totally different terms. The total consideration, according to Ex.P8, is Rs.1,60,000/- and an advance of Rs.25,000/- was paid and it recites that an advance of Rs.25,000/- was paid by the purchaser and remaining amount of Rs.1,35,000/- was paid through ICICI Bank cheque. These discrepancies led to the trial Court concluding that the transaction under Exs.P2 and P3 are doubtful. Once it is held that the transaction under Exs.P2 and 3 are doubtful, the sale under Ex.P8 cannot be held to be pursuant to those transactions. Therefore, the purchaser, namely, the first respondent herein cannot claim to be the absolute owner of the property, *de hors*, the attachment made by the Court. In other words, it cannot be said that attachment will be subject to the rights of the first respondent under the contracts, namely Ex.P1 and P3. On the said



conclusion, the trial Judge dismissed the application filed under Order 21 Rule 97 C.P.C. Aggrieved, the first respondent preferred an appeal in C.M.A.No.27 of 2005.

6. The learned District Judge, on reconsideration of the evidence, believed the contention of the obstructor/first respondent herein to the effect that sale under Ex.P8 is pursuant to the agreement Exs.P2 and P3. The learned District Judge also referred to Ex.P9, which is a loan application submitted by the obstructor/first respondent, which is prior to the date of attachment, in order to conclude that there was an agreement between the parties for sale of this property. On the above conclusion, the learned Appellate Judge reversed the Judgment and Decree of the trial Court and sustained the objection of the obstructor. The appeal was allowed declaring that the auction sale would not confer any title on the auction purchaser. Aggrieved, the auction purchaser has come up with this second appeal.

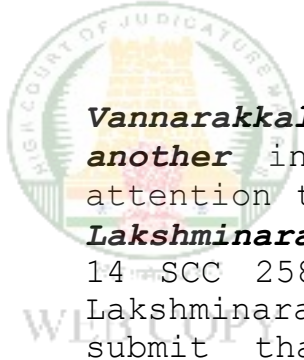
7. The following question of law was framed at the time of admission.

Whether the lower appellate Court was right in concluding that the attachment ordered and effected on 31.12.2002 will be subject to rights of the first respondent under the sale deed Ex.P8 dated 11.04.2003 on the ground that there were two agreements of sale between the judgment debtor and the first respondent/claimant prior to the order of attachment even though sale deed does not refer to any one of those agreements?

8. Heard Mr.M.P.Senthil, learned counsel appearing for the appellant and Mr.Anand C.Rajesh appearing for the first respondent.

9. While Mr.M.P.Senthil, appearing for the appellant would vehemently contend that unless it is proved that the sale under which the obstructor claims to be the owner pursuant to the earlier agreements, the obstructor cannot claim right under the sale, which will not confer a better right on the obstructor. According to him, the provisions of Section 64 of C.P.C. would operate in such circumstances and the sale, which is independent of the agreement will not confer better title. Even assuming the agreement to be true and valid, it cannot prevail over the attachment.

10. Contending contra, Mr.Anand C.Rajesh, learned counsel appearing for the first respondent would submit that an agreement of sale though does not by itself confer any right on the purchaser, but, once it fructifies into a sale, an attachment during the interregnum will be subject to the right of the agreement holder. Therefore, the sale made in pursuance of the agreements which are prior to the attachment would prevail, *de hors* the attachment. He would also rely upon the judgment of the Hon'ble Supreme Court in

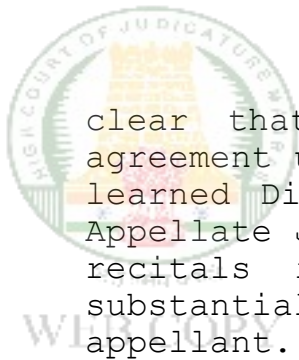


Vannarakkal Kallalathil Sreedharan vs. Chandramaath Balakrishnan and another in support of his contention. He would also draw my attention to the Judgment of the Hon'ble Supreme Court in **Kancherla Lakshminarayana vs. Mattaparthi Syamala and others** reported in 2008 14 SCC 258. Drawing my attention to the Judgment in Kancherla Lakshminarayana's case, Mr.Anand C.Rajesh, learned counsel, would submit that if a contract of sale was entered into before attachment, conveyance in pursuance of the contract passes a good title in spite of attachment.

11. There is no quarrel over the preposition of law that a sale made pursuant of the earlier agreement of sale would prevail over the attachment as what is attached is only right title of the Judgment Debtor and nothing more and attachment would be subject to obligations of the Judgment Debtor. However, in order to invoke the benefit, it should be shown that the sale was pursuant to the agreement and not independent of the agreement. Therefore, the essential question that has to be decided is whether sale dated 11.04.2003 was pursuant to the earlier agreement or not.

12. Two earlier agreements were projected namely Ex.P2 and P3. I have already pointed out Ex.P3 clearly inadmissible in evidence for want of attestation. As far as Ex.P2 is concerned, as rightly pointed out by the trial Court that sale under Ex.P8 cannot be said to be pursuant to Ex.P2. Ex.P2 is of the year 1998 and the total consideration fixed under the said instrument is Rs.1,75,000/-. It also recites that a sum of Rs.50,000/- has been paid as advance leaving the balance of Rs.1,25,000/-. But, recitals regarding the consideration in Ex.P8 would go to show that it is not pursuant to Ex.P2. The sale deed Ex.P8 does not refer to Ex.P2 agreement. The sale consideration under Ex.P8 is Rs.1,60,000/- as against Rs.1,75,000/- as found in Ex.P2. Ex.P8 recites that an advance of Rs.25,000/- was paid even in the year 1998. Even assuming that Ex.P2 is true, unless it is shown that Ex.P8 is pursuant to Ex.P2, Ex.P8 cannot prevail over the order of attachment. On the face of recitals in two instruments, the irresistible conclusion is that two instruments are independent to each other. As regards Ex.P9-loan application, the same is more revealing. There are three other agreements. The said agreements are on various dates, wherein, the owner, namely, the Judgment debtor has given an undertaking to sell the property to the obstructor. None of them are stamped or attested. So, they cannot be taken as valid agreements of sale.

13. Even in the Judgment that is relied upon by Mr.Anand C.Rajesh, learned counsel for the first respondent, i.e. Sreedharan's case, the Hon'ble Supreme Court has pointed out that a sale pursuant to the earlier contract of sale will pass a good title in spite of attachment, only when it is shown that the sale is in pursuance of the earlier contract. As I have already pointed out the essential conclusion on the recitals found in Ex.P2 and P8, it is



clear that the sale under Ex.P8 is not pursuant to the sale agreement under Ex.P2. I am unable to sustain the conclusion of the learned District Judge in this regard, in as much as the learned Appellate Judge has not adverted to the various discrepancies in the recitals in the documents. I, therefore, conclude that the substantial question of law has to be answered in favour of the appellant.

14. In view of the above, the Second Appeal is allowed and the Judgment and Decree of the learned Principal District Judge, Tirunelveli in C.M.A.No.27 of 2005 is set aside and the order of the trial Court is restored. E.A.No.1482 of 2004 will stand dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The I Additional District Judge,
Tirunelveli.
2. The Principal Subordinate Judge, Tirunelveli.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-11654[F] dated 17/03/2021)

+1 CC to M/s.M.S.JAWAHARLAL, Advocate (SR-11656[F] dated 17/03/2021)

C.M.S.A. (MD) No.14 of 2007
16.03.2021

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