



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2021

Delivered on : 06.12.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

WEB COPY

C.R.P. (MD)No.2294 of 2018

Josephin Sironmani

... Petitioner

Vs.

1.B.Veerammal

2.C.Dharmar

3.D.Barani

4.M.Pandiyammal

... Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 26.04.2018, made in I.A.No.396 of 2016 in I.A.No.49 of 2015 in O.S.No.36 of 2013 on the file of the V Additional District Judge, Madurai.

For Petitioner : Mr.T.Lajapathi Roy

For R1 & R3 : No Appearance

For R2 & R4 : Mr.K.Abiya, Legal aid counsel

ORDER

This Civil Revision Petition is filed against the order, dated 26.04.2018, made in I.A.No.396 of 2016 in I.A.No.49 of 2015 in O.S.No.36 of 2013 on the file of the V Additional District Judge, Madurai.

2. The revision petitioner herein is the third party claimant. The first respondent herein is the plaintiff, the respondents 2 to 4 herein are the defendants in the original suit. The first respondent / plaintiff filed a money suit against the defendants and in the original suit, the plaintiff filed a petition in I.A.No.123 of 2013, with a prayer to attach some other properties. That petition was allowed by the Trial Court, on 10.02.2014 and those properties were attached. Then, she filed another petition in I.A.No.49 of 2015, to attach some other property before the judgment. That petition was allowed by the Trial Court.

3.Subsequently, some third parties, by name, Vijaya Lakshmi and others filed a petition in I.A.No.601 of 2014 claiming that they are entitled to 3/4th share in the petition mentioned properties and that the respondents 2 and 3 had only 1/4th share. Subsequently, the respondents 2 and 3 raised the attachment with regard to the undivided



3/4th share in the properties. Subsequently, the first respondent - plaintiff filed another petition in I.A. No.49 of 2015 claiming the 1/4th share of the defendants.

4. Against the same, the revision petitioner filed I.A.No.396 of 2016 before the trial Court and that petition was dismissed by the Trial Court. Against which, the revision petitioner has approached this Court by way of this Revision.

5. Brief substance of the petition, in I.A.No.396 of 2016, is as follows:

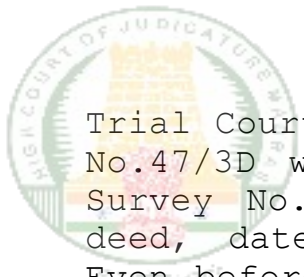
The petition mentioned property in its larger extent belonged to one Chinnamuthuveerana Thevar, by means of a registered sale deed, dated 07.06.1945. After his death, the property devolved on the first defendant as a Hindu Joint family property. The sons and daughters of the first defendant were in joint possession and enjoyment of the property. The petitioner / third party claimant had purchased the petition mentioned property from one Dharmar, by means of a registered sale deed, dated 18.09.2014, for a valuable consideration of Rs,3,50,000/- and the petitioner is in possession and enjoyment of the said property. When he applied for Encumbrance Certificate, he came to know that the said property was attached, on 20.08.2015 and that an ex-parte decree was passed, on 20.08.2015. The plaintiff and the defendants were close relatives and they never disclosed the pendency of the suit and on the date of purchase, there was no encumbrance in the Encumbrance Certificate. The alleged pro-note was not executed by all the owners of the property. The decree and the attachment is not binding on the petitioner - third party claimant. The respondents 2 to 4 / defendants have no title or possession as on 20.08.2015 and the attachment order passed in I.A. No.49 of 2014 is to be raised.

6. Brief substance of the counter filed by the first respondent, in I.A.No.396 of 2016, is as follows:

There is no collision between the plaintiff and the defendants. The petitioner never have any right in respect of the schedule mentioned property.

7. The Trial Court, after hearing both the sides and after perusing documents EX.P.1 to Ex.P4, has dismissed the petition.

8. On the side of the revision petitioner, it is stated that earlier, the plaintiff has filed a petition in I.A.No.123 of 2013 seeking for attachment of defendants' joint family properties and the same was allowed and 1/4th share of the defendants was attached. Once again, the plaintiff has filed another attachment application in I.A.No.49 of 2015 and subsequently, on 24.06.2015, the petition mentioned properties were erroneously attached by the



Trial Court including the petitioner's property situated in Survey No.47/3D with an extent of 1 acre 42 cents and 1/3rd share in Survey No.47/3C. The Trial Court failed to consider the sale deed, dated 18.09.2014, in favour of the revision petitioner. Even before the filing of the attachment petition in I.A.No.49 of 2015, the sale deed was executed, but, the plaintiff has suppressed the sale and filed the I.A.petition. The purchase of the petitioner is for a valuable sale consideration. There are yet other properties attached in the suit and there is no necessity to attach the property by the petitioner.

9. Though notice was served on the first respondent/plaintiff and the name of the first respondent was printed, none appears for the first respondent / plaintiff. A legal aid counsel was appointed to represent respondents 2 to 4. No serious objection was raised on the side of the respondents 2 to 4.

10. A perusal of the documents reveals that I.A.No.49 of 2015 was allowed by the Trial Court, without appreciating any documents and without examination of any witness. A perusal of the documents reveals that the sale deed of the petitioner is dated 18.09.2014. The petition in I.A.No.49 of 2015 was filed on 07.01.2015, ie., subsequent to the date of purchase. On the date of purchase of the property, there was no attachment. The Trial Court has given an erroneous finding that the sale deed is affected by *lis pendens*. There was no case regarding the ownership of this property, at the time of purchase. Doctrine of *lis pendens* is not applicable to this transaction. The suit is only a money suit and some other properties were already attached by the Trial Court.

11. In the above circumstances, there is no necessity for attaching the property of the revision petitioner and hence, the order passed by the Trial Court in I.A.No.396 of 2016 is set aside and in I.A. No. 396 of 2016 is allowed. The attachment of the property mentioned in Ex.P1 - sale deed is hereby vacated.

12. This Civil Revision Petition is allowed. No costs.

Sd/-

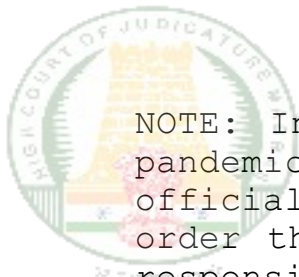
Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

1.The V Additional District Judge,
Madurai.

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

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-37563[F] dated 07/12/2021)

+1 CC to M/s.K.ABIYA, Advocate (SR-37466[F] dated 06/12/2021)

C.R.P (MD)No.2294 of 2018
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