



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.07.2021
PRONOUNCED ON : 08.07.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN
CRP(MD)No.889 of 2014
(Through Video Conferencing)

Margadarsi Chits Pvt Limited
by its Foreman Sr.B.Chandrasekar
Madurai-16

... Petitioner

Vs

1.S.Meenakshi
2.S.Mani
3.S.Raja
4.S.Velmurugan
5.L.Meyyappan
6.S.Suresh Kumar
7.S.Meenakshi

... Respondents

Prayer:- This Civil Revision Petition has been filed under section 115 of C.P.C., against the fair and decreetal order, dated 01.02.2014, made in EP.No.65 of 2010, by the Additional District Munsif, Madurai Town, in CD.No.172 of 2007, on the file of the Madurai Assistant Registrar of Chits, Madurai South.

For Petitioner : Mr.S.Suresh

For Respondent : RR1 to 3 and 5 to 7-Dismissed
R4 - No appearance

ORDER

1.This Civil Revision Petition has been filed, against the fair and decreetal order, dated 01.02.2014, made in EP.No.65 of 2010, by the Additional District Munsif, Madurai Town, in CD.No.172 of 2007, on the file of the Madurai Assistant Registrar of Chits, Madurai South.

2.The facts of the case, in a nutshell, are that the Petitioner is the decree holder and the Respondents are the judgement debtors. The suit was filed for recovery of money with interest and it was decreed on 11.03.2008. Since the Respondents failed to pay the decreetal amount, the above execution petition for attachment and sale of the Petition mentioned properties was filed against the Respondents 1 and 4 to 6, before the Additional District Munsif,



Madurai Town and since it was dismissed, by the impugned order, this Civil Revision Petition has been filed by the decree holder.

3. The learned counsel for the Petitioner has submitted that by misconstruing the provisions of Section 60 of CPC, the court below erred in concluding that the schedule mentioned properties are exempted from attachment and that attachment and sale of the properties mentioned in the schedule ought to have been allowed, as they are not exempted from attachment and sale, under Section 60 of CPC and hence, the impugned order is liable to be set aside.
4. This Civil Revision Petition is of the year 2014. Pursuant to the order dated, 11.01.2016 of this Court, directing the Respondents to pay batta within a specified time, since batta was not paid by the Respondents 1 to 3 and 5 to 7 within time, this Civil Revision Petition stood automatically dismissed as against them. When the matter is taken up today for consideration, there is no representation for the 4th Respondent.
5. This court heard the learned counsel for the Petitioner and also carefully perused the materials placed on record.
6. Since the impugned order was passed relying on Section 60 of CPC and is also assailed relying on the said provision, in order to ascertain as to whether the said provision was rightly understood by the court below, it is appropriate to extract the same as follows:-

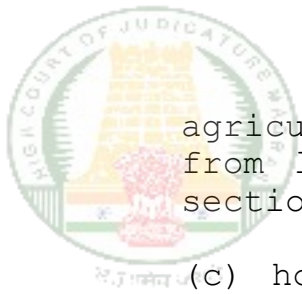
7. Section 60 of CPC:- Property liable to attachment and sale in execution of decree:-

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power, which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :-

Provided that the following particulars shall not be liable to such attachment or sale, namely:-

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of



agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment belonging to an agriculturist or a labourer or a domestic servant] and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the government or of a local authority or of any other employer or payable out of any service pension fund notified in the Official Gazette by the Central Government or the State government in this behalf, and political pension;

(h) the wages of labourers and domestic servants, whether payable in money or in kind;

(i) salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance.

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.

(ia) one-third of the salary in execution of any decree for maintenance;

(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act (62 of 1957), applies;

(k) all compulsory deposits and other sums in or derived from and fund to which the Provident Funds Act, 1925, (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;



(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968) for the time being applies in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;]

(1) any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant for allowance made to any such servant while under suspension;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment-debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation I.— The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (1) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation II.— In clauses (1) and (ia)], "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1) derived by a person from his employment whether on duty or on leave.

Explanation [III.]—In Clause (1), "appropriate Government" means—



(i) as respect any person in the service of the Central Government, or any servant of a Railway Administration or of a cantonment authority or of the port authority of a major port, the Central Government;

(ii) [Omitted]

(iii) as respects any other [servant of the Government] or a servant of any other local authority, the State Government.

Explanation IV.—For the purposes of this proviso, "wages", includes bonus, and labourer" includes a skilled, unskilled or semi-skilled labourer.

Explanation V.—For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI.—For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

(a) by his own labour, or

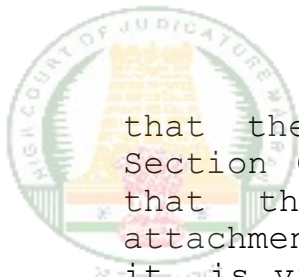
(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in case or in kind (not being as a share of the produce), or both.

(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit on any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt houses and other buildings with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment from attachment or sale in execution of decrees for rent of any such house, building, site or land."

8. In this case, the properties mentioned in the Schedule sought to be attached and sold are Fridge, Television, Mixie, Grinder, Steel almirahs, Sofa sets, Wooden Cots, Washing Machine, Fans, Chairs, Computer Set, dining Table, A/C Machine, VCD Player, Music System, Iron Bureau and Water Heater. A reading of Section 60 of CPC makes it crystal clear that the said properties, sought to be attached are not exempted from attachment and sale and hence, they are liable to be attached. Therefore, this Court is of the view



that there was non-application of mind and misconception of Section 60 of CPC, on the part of the court below, in concluding that the petition mentioned properties are exempted from attachment and sale and consequently, the impugned order passed by it, is vitiated and is liable to be set aside and accordingly, it is set aside.

9. In fine, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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To

1. The Additional District Munsif, Madurai Town
2. The Madurai Assistant Registrar of Chits, Madurai South

Copy to

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

CRP(MD)No.889 of 2014
08.07.2021

RC (16.07.2021) 6P-5C