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C.R.P. No. 1787 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 1787 of 2017

and

C.M.P. No. 8366 of 2017

1. Alamelu,
W/o. Veeman
2. Iruyayee,
W/o. Subramani
3. Sekar,
S/o. Veeman
4. Mani,
S/o. Veeman
5. Raja,
S/o. Veeman

... Petitioners

Versus

1. Sakthivel,
S/o. Perumal



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2. United India Insurance Company,
Branch Office,
77-A.A. Street,
Oriental Complex,
Salem-636 001.

3. Elumalai,
S/o. Ramasamy

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 27.08.2013 made in R.E.A.No.8 of 2011 in R.E.P. No.4 of 2010 in MCOP. No. 901 of 2004 on the file of learned Addl. District Judge, Salem.

For Petitioner : Mr.G.Pugazhenth

For Respondents : No appearance for R1 to R3

ORDER

The Revision Petitioners herein are the claimants in M.C.O.P. No.901 of 2004 on the file of District Judge, Motor Accident Claims Tribunal, Salem claiming compensation for the death of husband of 1st petitioner and father of other petitioners.



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2. The 1st respondent is the owner of the vehicle contested the M.C.O.P. and finally, an award was passed on 0204.2009 holding that the 1st respondent is liable to pay compensation and the 2nd respondent insurance company has no liability. Thereafter, to execute the decree, the claimants filed execution petition in R.E.P. No. 4 of 2010 before the Addl. District Court, Salem seeking attachment of immovable property belong to the 1st respondent. The Execution Court issued notice to the 1st respondent and the notice was served on the 1st respondent on 24.02.2010. Thereafter, the 1st respondent has not raised any objections and accordingly, the property was attached on 21.09.2011 (item no.1). Thereafter, the third party Elumalai filed an application in E.A. No. 8 of 2011 claiming that he is the owner of the property based upon the sale deed dated 19.05.2010. Based upon that application, the Execution Court ordered attachment of item No.1 of the property. However, the the learned counsel for Decree holder/claimant submitted that after the execution of notice, in order to defraud the claim amount, the judgment debtor purposely executed the sale deed in favour of



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the said Elumalai, as such is not maintainable in law. But, the Execution Court failed to appreciate the said fact.

3. Despite notice served on the respondents, there is no representation on the side of respondents. In the year of 2004, the claimants have filed the claim application and the claim award was passed against the 1st respondent, who is owner of vehicle. To execute the decree, the claimants filed the execution petition in E.P. No. 4 of 2010, but to avoid the claim, purposely, the 1st respondent executed the sale deed on 19.05.2010. On perusal of records, it would clearly reveals that in the year of 2004, the husband of 1st petitioner was died in the accident due to the negligence of 1st respondent/judgment debtor and the M.C.O.P. Petition was contested by him before the trial court. Accordingly, the learned Tribunal allowed the claim petition holding that the insurance company is not liable to pay compensation and only the 1st respondent/judgment debtor is liable to pay the claim amount. After service of notice in the month of February by Execution Court, in the month of May 2010, the judgment debtor executed the sale deed in favour of third party Elumalai, which would clearly shows that to avoid the claim of decree holder, he executed the sale deed, which is



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a sham and nominal document. Having knowingly well about the execution proceedings, he would have executed the sale deed in favour of third party Elumalai as he wanted to defraud the claim of decree holder. Therefore, the alleged sale transfer in the name of Elumalai would not bind the claimants, because they have already initiated execution proceedings, but the trial court erroneously allowed the execution application by raising attachment, as such is erroneous one and hence, the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed by the learned trial judge in R.E.A.No. 8 of 2011 is set aside and in respect of item no.1 of petition schedule property is ordered to be attached. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

I Addl. District Judge,

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Salem.

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T.V.THAMILSELVI, J.

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