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CMA.No. 1516 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.03.2023**

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR  
AND  
THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI**

**C.M.A.No. 1516 of 2008**

Lavanya

... Appellants

Vs.

1. Lakshmi
2. Major Karthick
3. Major Kumar
4. Kumaravadivel
5. Rathinasamy

... Respondents

Appellants 2 and 3 declared as major  
and discharged the guardianship 1<sup>st</sup>  
appellant vide order of Court dated  
30.11.2016 by PSNJ & RSMJ made in  
M.P.No. 1 to 4/2014 in CMA.No. 1516/2008

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 196 Order 21 Rule 58(4) C.P.C. read with Section 19 of Family Courts Act, 1984 against the judgment and decree of the Family Court, Coimbatore dated 26.09.2007, E.A.No. 2 of 2007 in E.P.No. 15 of 2005 in O.S.No. 5 of 1995.

For Appellant : Mr. S.D. Venkadesan  
for Mr. A. Ravichandran

For Respondents : R1 died  
Mr. K. Mayilsamy  
for respondents 2 and 3  
No appearance for fourth respondent  
Batta due with Reg fourth respondent



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## **JUDGMENT**

**[Judgment of the Court was delivered by**

***D.KRISHNAKUMAR, J.]***

The appellant herein, who is a third party, has filed E.A.No. 2 of 2007 in E.P. No. 15 of 2005 in O.S.No. 5 of 1995 before the Court below.

2. According to the appellant, the first respondent is the wife of fourth respondent and respondents 2 and 3 are the sons of fourth respondent. The respondents 1 to 3 had filed the suit in O.S.No. 5 of 1995 on the file of the Family Court, Coimbatore for the relief of decree for payment of Rs. 500/- per month as maintenance to the respondents 1 to 3 and also to create charge over the suit schedule 1 property towards the maintenance and direct the respondent 4 and 5 to pay a sum of Rs. 1,00,000/- with all jewels and for other reliefs sought for in the aforesaid suit. After the trial, the Family Court has passed the decree in favour of respondents 1 to 3/decreed holders on 07.03.1999. The respondents 1 to 3 have filed the E.P. No. 15 of 2005 for payment of the maintenance amount based on the decree passed in the suit and also bring the property for auction for settling the said arrears amount to the plaintiffs/petitioners. At this stage, the



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Execution Application No. 2 of 2007 was filed by the appellant herein claiming the right over the property, stating that the suit property was purchased by her. In the said Execution Application, she claimed that an enquiry to be conducted with regard to the title of the suit schedule property and the attachment over the suit schedule property to be set aside.

3. The said application in E.A.No. 2 of 2007 in E.P.No. 15 of 2005 in O.S.No. 5 of 1995 was dismissed by the Family Court by its order dated 26.09.2007 and challenging the said order, the instant appeal has been preferred before this Court.

4. According to the appellant, the dismissal order passed by the Family Court is unsustainable and erroneous and the same has to be set aside. The appellant has purchased the said property from the fourth respondent. Therefore, the respondents 1 to 3 cannot proceed as against the appellant by executing the decree passed by the Family Court. This aspect has not been considered by the Trial Court in proper prospective and therefore seeks for setting aside the order of the Family Court.



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5. According to the appellant, after verifying the encumbrance over the suit schedule property from the office of the Sub-Registrar, Perianaikenpalayam, the appellant had purchased the said property for consideration of Rs.2,23,000/- as per registered Sale deed dated 10.12.1999 and she has been in possession of the said property from the said date. According to the appellant, this aspect has not been discussed in the impugned order passed by the Family Court and therefore she seeks for setting aside the order.

6. Per contra, the learned counsel for the respondents has strongly objected to the said contention of the appellant as contrary to the facts of the case. In this behalf, he drew the attention of this Court to the order dated 28.08.1998 passed in I.A.No. 16 of 1997 wherein the Family Court has granted interim injunction, restraining the fourth respondent/husband from alienating the suit property pending disposal of the suit O.S.No. 5 of 1995. The said order has been passed after hearing the parties concerned, namely respondents 4 and 5. Therefore, it is apparent that the fourth respondent has disobeyed the order of the Family Court and has executed the sale deed in favour of the appellant, who is a third-party claimant. Therefore there is no justification for the appellant to seek interference of



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the Court for lifting the attachment order passed by the Family Court. The Court below has consciously considered the said aspect and dismissed the said application, which does not warrant interference.

7. Heard the parties concerned and perused the materials on record.

8. The short point involved in the present appeal is whether the appellant is entitled for the relief as prayed for in E.A.No.2 of 2007?

9. The learned counsel for the appellant has contended that the appellant has purchased the schedule mentioned property as per the Sale Deed, registered as Document No. 1869 of 1999, dated 10.12.1999, SRO, Perianaikenpalayam and she is an innocent purchaser and hence the auction of the property in the execution petition is unsustainable.

10. On considering the fact that the Family Court has granted interim injunction in I.A.No. 16 o 1997 on 28.08.1988, restraining the fourth respondent from alienating the suit property pending disposal of the said suit and further the Parties have also appeared in the aforesaid application and contested the same and passed an order of injunction, execution of sale



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11. During the pendency of the appeal, an affidavit has been filed by the appellant stating that she agrees to pay a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to the first respondent Mrs.Lakshmi within three months (twelve weeks) from the date of swearing in of the affidavit, that is, first day of November 2018. But according to the respondents 1 to 3, till today the appellant has not paid any amount to them.

12. In view of the above, considering the fact that an undertaking has been given in the Affidavit filed by the appellant on 1.11.2018, we direct the appellant to pay a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) together with interest at the rate of 6 % per annum from 1.11.2018 till date of payment, within a period of eight weeks from the date of receipt of a copy of this order, failing which, it is for the respondents to proceed



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with the execution petition in the manner known to law. It is reported that the first-respondent has expired. The amount, as ordered above, shall be deposited to the credit of E.P. No.15 of 2005 in O.S.No. 5 of 1995 on the file of Family Court, Coimbatore.

13. With the above directions, the Appeal stands dismissed. No costs. Consequently, M.P.1 is closed.

**(D.K.K., J.) (K.G.T., J.)**  
**28.03.2023**

Intex : Yes/No  
Internet : Yes/No  
mrn

To  
The Family Court, Coimbatore



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**D.KRISHNAKUMAR, J.**  
**and**  
**K.GOVINDARAJAN THILAKAVADI, J.**

**(mrn)**

**JUDGMENT MADE IN**  
**C.M.A.No. 1516 of 2008**

**28.03.2023**