



C.M.S.A.No.23 of 1997

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.09.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.S.A.No.23 of 1997

1. Vimala

2. Minor Yuvaraj

Represented by Mother and Friend

1st appellant,

No.2, Palliarasan Street,

Anna Nagar – 600 104.

... Appellants

Vs.

1. Shanmugam

2. Radhakrishnan

3. Kailasammal

4. Rajakumari

5. Murugammal

6. Sulochana

... Respondents

PRAYER:Civil Miscellaneous Appeal filed under Section 100 read with Order 21 Rule 58 of C.P.C., against the order and judgment passed by the Subordinate Judge, Poonamallee in C.M.A.No.26 of 1995 dated 06.12.1996 against the order and judgment passed by the District Munsif Court, Tiruvellore in E.A.No.512 of 1993 in E.P.No.188 of 1989 in O.S.No.3211 of 1984 dated 09.02.1995.



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For Appellants : Mr.K.Premkumar

For R1,R4 & R5 : Mr.Panchaksaram

For R2 and R6 : Not ready in notice

R3 : Died (dismissed as not pressed vide
order dated 25.09.2019)

J U D G E M E N T

The appellants are decree holders. Originally, they have filed the suit in O.S.No.3211 of 1984 for maintenance and they obtained a decree on 09.02.1995. Therefore, in the execution proceedings, they attached the suit property. After decree in the said execution proceedings, they filed the execution petition in E.P.No.188 of 1989 and the said property was brought on sale to realize the decreetal amount. At that time, the respondents herein filed an application in E.A.No.512 of 1993 under Order 21 Rule 58 C.P.C., claiming that the judgment debtor is not entitled to the entire property and therefore, attachment of the entire property will not bind them. Further, they have stated in the claim petition that the suit property originally belonged to the father of the judgment debtor and the respondents, one Govindha Reddy. The said



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Govindha Reddy has got seven legal heirs and therefore, each of them are entitled to 1/7th share in the said property, whereas, the entire property and share of the other shareholders also were attached. Therefore, attachment in respect of 6/7 shares has to be raised and the said petition was dismissed by the Executing Court. Challenging the same, the respondents filed an appeal before Subordinate Judge, Poonamallee in C.M.A.No.26 of 1995. The learned Subordinate Judge after hearing the appeal and considering the materials available on record, allowed the appeal and attachment was raised in respect of 6/7 share. Now, challenging the raising of attachment, the decree holders have filed the present second appeal.

2. While admitting the Civil Miscellaneous Second Appeal on 20.05.1997, this Court has formulated the following substantial questions of law:

i. Whether the lower court is right in allowing the claim petition when the claimants have not filed any documents to show that their interest as on the date of attachment?



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ii. Whether the lower appellate court is right in relying upon the only document Ex.P1 of the year 1961 when other documents for joint enjoyment, patta, adangal, kist receipts could have been produced by the claimants?

Iii. Whether the lower appellate court is right in allowing the claim petition when the claimants did not adduce any evidence to show their interest on the date of attachment?

3. The learned counsel for the appellants submitted that the appellants filed the suit for maintenance and a sum of Rs.300/- was ordered as maintenance amount and the same was not paid by the husband of the first appellant. Hence, the property was attached and the same was brought on sale. At the time, the respondents have filed a claim petition under Order 21 Rule 17 C.P.C., and executing court dismissed the same and hence challenging the same, the respondents filed an appeal before the first appellate court. The first appellate court allowed the appeal holding that the decree holders are entitled to bring the property for sale with respect of 1/7 share, since the judgment debtor is entitled to



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1/7 share in the suit property. Other legal heirs of Govindha Reddy are also entitled to 6/7 share. Therefore, attachment to that effect is set aside and the attachment was raised by the First Appellate Court. Challenging the same, the present Civil Miscellaneous Second appeal is filed by the appellants.

4. Learned counsel for the appellants further submitted that they have not produced any other document, except the title deed in respect of the property in question. It has to be ascertained first as to whether all the other respondents are in possession of the property? The judgement debtor alone was in possession of the property? At the time of attachment, the respondents have not raised any objections or even till filing of the Execution petition, till the property was brought on sale. Only in order to protract or obstruct the decree obtained by the decree holder, they have filed the petition belatedly only at the time when the property was brought on sale. The poor lady with infant child could not get any remedy. Respondents are aware of the dispute, maintenance decree and attachment of the property. Despite they knowing all the facts,



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only at the fag end of the proceedings ie., when the property was brought on sale, they have filed the application in order to protract the decree. The Executing Court rightly appreciated and dismissed the claim petition filed by the respondents and however, the first appellate court failed to consider the same and since the property stood in the name of father of the judgment debtor, the judgment debtor is not entitled to entire property. Therefore, the entire properties are not liable to be attached but the same are liable to be brought on sale. Therefore, the present appeal may be allowed and the Executing Court shall sell the entire property and realize the decree amount.

5. Learned counsel for the respondents 1, 4 and 5 submitted that the property belonged to one Govidha reddy, and the judgment debtor is one of his legal heirs. All the legal heirs of Govidha Reddy are entitled to 1/7 share and in that way, the judgment debtor is only entitled to 1/7 share. Therefore, the decree holder can attach only the share of the judgment debtor and not the entire share of the legal heirs of the Govindha Reddy. Though the Executing Court failed to consider the



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same, but the Executing Court had not properly appreciated the legal position and the documents filed by the respondents herein and dismissed the claim petition. However, the first appellate court rightly re-appreciated the same, and since the father of the judgment debtor is the owner of the property and as he died intestate, leaving behind the legal heirs and as there are seven legal heirs including the wife of Govindha Reddy and therefore, each of the shareholders are entitled to 1/7 share. The first appellate court rightly appreciated the documentary evidence, and allowed the First Appeal. The appellants/decreed holders have not established that the entire property belongs to the judgment debtor. She is entitled to get the attachment in the entire property and bring it for sale for realization of the decree amount, in the absence of any documentary evidence, only available document is title deed/sale deed in the name of the father of the judgment debtor.

6. Heard both sides and perused the materials available on record.



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7. As far as the first substantial question of law is concerned, admittedly the property stood in the name of father of the judgement debtor namely Govindha Reddy and the Govindha Reddy has got six children. He died intestate leaving behind his wife and children. The judgment debtor is one of the children of Govindha Reddy. The judgment debtor has got only 1/7 share from his father's property. The appellants have not produced any materials to show that the entire property belongs to the judgment debtor. The judgment debtor is not entitled exclusive right, title and possession over the schedule mentioned property. Except the sale deed in the name of Govindha Reddy, no other documents is available. Therefore, the judgment debtor is only entitled to 1/7 share in the schedule mentioned property. The first substantial question of law is answered accordingly.

8. As far as the second substantial question of law is concerned, Ex.P1 stands in the name of Govindha Reddy. The said Govindha Reddy purchased the said property in the year 1961. The sale deed clearly shows that the property purchased by Govindha Reddy and the petition



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mentioned properties covered under the sale deed. Though the respondents have not produced any documents of joint enjoyment, Patta, Adangal, Kists receipts etc., but however, the property even at the time of attachment and filing of claim petition, stands only in the name of the deceased Govindha Reddy. Therefore, all the legal heirs of Govindha Reddy are entitled to get the share and therefore, the second substantial question of law is answered accordingly.

9. As far as the third substantial question of law is concerned, except the document Ex.P1 that stood in the name of Govindha Reddy, no other documents have been filed by the decree holders/appellants herein to show that the judgment debtor is having any property or the attached property exclusively belongs to the judgment debtor. Therefore, the appellants are not entitled to attach the entire property. Since the judgment debtor is entitled to get only 1/7 share in the schedule properties, the decree holders will not have any interest. The third substantial question of law is answered accordingly.



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10. Since all the substantial questions of law are answered in favour of the respondents and against the appellants. There is no merit in the Civil Miscellaneous Second appeal. The Civil Miscellaneous Second Appeal is dismissed. However, considering the facts and circumstances of the case and the relationship between the parties and the nature of the litigation, there shall be no order as to costs. Consequently, connected miscellaneous petition if any, is closed. However, the Executing Court can proceed with 1/7 share of the judgement debtor to realize the decree amount.

13.09.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. The District Munsif,
District Munsif Court,
Tiruvellore.
2. The Subordinate Judge,
Subordinate Court,
Poonamallee.
3. The Section Officer,
VR Section,
High Court, Madras.



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P.VELMURUGAN, J.

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