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CMA.Nos. 1008 & 1010 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.Nos. 1008 and 1010 of 2023

and

CMP.Nos. 9541 & 9552 of 2023

P. Kanagaraj

...Appellant in CMA.1008/2023

R. Periyasamy Gounder (died) by LRs

1. K. Karthik

2. S. Nagarathinam

...Appellants in CMA.1010/2023

Versus

1. The Competent Authority and
District Revenue Officer
Tiruppur.

... 1st Respondent in both CMAs

2. The District Revenue Officer
Dindigul

...2nd Respondent in CMA.1010/2023

3. The District Revenue Officer
Coimbatore.

... 3rd Respondent in

CMA.1010/2023

4. M/s. Sri Kandiamman Finance
1680/16, Ramanees Residency
Ramanathapuram



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- | | |
|-----------------|-------------------------------------|
| Coimbatore. | ...2nd respondent in CMA.1008/2023 |
| 5. K.Veerasamy | ... 3rd respondent in CMA.1008/2023 |
| 6. K.Padmavathi | ... 4th respondent in CMA.1008/2023 |
| 7. S. Thangaraj | ... 5th respondent in CMA.1008/2023 |

Prayer in CMA.No.1008 of 2023:

Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interest of Depositors Act, 1997, prays to set aside the fair and decretal order passed in O.A.No. 27 of 2012 dated 07.02.2023 by the Special Court under T.N.P.I.D. Act.

Prayer in CMA.No.1010 of 2023:

Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interest of Depositors Act, 1997, prays to set aside the fair and decretal order passed in O.A.No. 16 of 2013 dated 07.02.2023 by the Special Court under T.N.P.I.D. Act, Coimbatore and consequently, raise/set aside the ad-interim order of attachment of the schedule of properties in O.A.No. 16 of 2013 passed by the Government under G.O.Ms.No. 1469 Home (Police XIX) Department, dated 17.10.2007.

In both CMAs:

For Appellants	:	Mr.S.B. Viswanathan
For R1	:	Mr.C. Jayaprakash Government Advocate



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COMMON JUDGMENT

The above two appeals arise out of the Common Order dated 07.02.2023 in O.A.Nos. 27 of 2012 and 16 of 2013.

2. The legal heirs of the deceased first petitioner in O.A.No. 16 of 2013 have filed the appeals against the aforesaid common order. O.A.No. 27 of 2012 was filed by the District Revenue Officer under Section 4(3) and 7(7) of the Tamil Nadu Protection of Interest of Depositors Act, 1997, to make absolute order of ad-interim attachment of the immovable properties mentioned in G.O.Ms.No. 1469, Home (Police-XIX) Department, dated 17.10.2007 under Section 4(3) and to further permit him to sell the properties under Section 7(7) of TNPID Act, 1997. O.A.No. 16 of 2013 was filed by the legal heirs of the deceased first petitioner therein under Section 7(3) of the Tamil Nadu Protection of Interest of Depositors Act, 1997 to raise the order of attachment made in the aforesaid G.O.Ms.No.1469, insofar as Item No.V of the said G.O.Ms.No.1469 is concerned. As common order was passed in the above



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said OAs, the appeals that arise out of the said OAs, are also disposed of by this Common judgment.

3. The respondents in O.A.No. 27 of 2012 is EOW-II, Coimbatore in Crime No. 9 of 2004. It is the case of the petitioner/Competent Authority that the respondents 2 to 5 in the said OAs collected deposits to the tune of Rs.38,57,700/- in the name of Financial Institution, namely, Sri Kandiamman Finance and as the said accused defrauded the depositors, investigation under the aforesaid Crime Number, was taken up. The Government, on being satisfied that the financial institution was not likely to return the deposit amount even after the maturity of the deposits to the depositors, issued G.O.Ms.No. 1469 Home (Police XIX) Department, dated 17.10.2007 for interim attachment of the immovable properties specified in schedule to the Government Order, of the said properties procured by the firm from and out of the deposit amount. The interim order of attachment was passed to transfer the properties from the firm to the Competent Authority, namely, the District Revenue Officer, Thiruppur, as the accused defrauded the depositors by diverting the deposit amount for purchase of additional assets in another



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name. The District Revenue Officer filed the petition for an order of absolute attachment of the properties mentioned in the schedule of the properties to the Government Order and to permit him to sell the same for satisfying the dues of the innocent depositors. The first petitioner in O.A.No. 16 of 2013 filed the OA contending that the properties mentioned in the schedule to the OA, absolutely belonged to him and that he was in exclusive possession and enjoyment of the same as an absolute owner thereof. According to the petitioner, the property was purchased by his father along with other properties as per sale deeds dated 09.10.1952 and 12.07.1957. During the life time of the petitioner's father, he executed a partition deed dated 26.02.1968 with respect to the properties purchased by him under the aforesaid sale deeds and allotted schedule Item No.I mentioned properties to the petitioner. According to the petitioner, none of the family members of the petitioner had any right, title, interest or possession in his properties. It was the further case of the petitioner that he had neither given the property to his sons, nor did he give any personal guarantee for his sons. Therefore, R.K. Kanakaraj had no interest, right, title or possession in his property. The petitioner therefore, submitted that the attachment proceedings taken against his properties were bad in law



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and on facts. During the pendency of the said OA, the first petitioner died and therefore, the second petitioner as legatee of the Will dated 13.02.2013 executed by the first petitioner was impleaded as the second petitioner and the third petitioner as a representative of the other legatee of the Will. The 1st petitioner's wife Lakshmi died on 26.02.2018 and her legal heirs filed the petition in I.A.No. 8 of 2018 to implead them as LR's of the 1st petitioner. The Special Court by common order dated 07.02.2023, allowed the OA filed by the Competent Authority in O.A.No. 27 of 2012 and dismissed the O.A.No. 16 of 2013. Aggrieved by the order and decree of the Special Court, the above appeals are filed by the petitioners in O.A.No. 16 of 2013. The parties will be referred to as per the rank in O.A.No. 16 of 2013.

4. The point for consideration in these appeals is whether the attachment over Item No.V of the schedule of properties in G.O.Ms.No. 1469 Home (Police XIX) Department, dated 17.10.2007, has to be raised or not?

5. The admitted facts are that the properties originally belonged



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to one Rengaswamy Gounder, the father of the deceased first petitioner.

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The said Rengaswamy Gounder had purchased the properties, vide sale deeds dated 09.10.1952 and 12.07.1957, vide documents, namely, Ex.P1 and Ex.P2 and the said properties were allotted to the share of the deceased first petitioner in the family partition deed dated 26.02.1968. The first petitioner had also purchased the other items on 10.03.1986 under Ex.P4 sale deed. During the pendency of the proceedings, the first petitioner died on 22.04.1917. The first petitioner executed a Will dated 13.02.2013 in favour of his grand sons, namely, Karthik and Ramesh. The said Ramesh died on 02.05.2017 leaving behind his mother Nagarathinam. Therefore, according to the petitioners, the properties belonged to them and R.P. Kanagaraj, had no right, title or interest in the suit Item No.V. The attachment of Item No.V by the respondent is legally unsustainable and therefore, the petitioners prayed for raising the attachment insofar as the suit Item No.V is concerned. It is seen that the first and second petitioners have relied on the Will in support of their title to the suit Item No.V. The Special Court that in the absence of the proof of the Will in terms of Section 68 of the Indian Evidence Act and as per Section 63 of the Indian Succession Act, held that the Will cannot be relied on and in the



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absence of the Will the properties would devolve on the two sons of the first petitioner, namely, R.P.Kanagaraj and R.P. Samydurai and therefore, the Competent Authority was justified in its finding that R.P.Kanagaraj had 1/2 share in the suit properties. I find no infirmity in the finding of the Special Court. It is relevant to note that the deceased first petitioner in his proof affidavit in O.A.No. 16 of 2013 admitted that he had only two sons, namely, R.P. Kanagaraj and Samydurai. Therefore, if the Will is discarded as not having been proved, in accordance with law, then the property would devolve by succession on the two sons of the first petitioner and hence, R.P.Kanagaraj would be entitled to 1/2 share. Therefore, the respondent is justified in proceeding against the 1/2 share of the R.P. Kanagaraj. I find that the appellants have failed to establish their exclusive title to the Item No.V and therefore, the order of the Special Court making the interim order of attachment absolute by the impugned order does not call for any interference. The learned Government Advocate submits that Rs.25,30,000/- was paid by the first and second petitioners/accused, represented by its Partner K.K. Veerasamy to the Competent Authority, the first respondent herein by way of Demand Draft dated 20.03.2021.



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6. According to the learned Government Advocate, the principal amount admittedly deposited is Rs.25,30,000/- and the interest component is Rs.39,27,700/- and totally a sum of Rs.38,57,700/- is due and payable to the depositors.

7. The learned Government Advocate submits that a sum of Rs.25,30,000/- is already deposited and only a sum of Rs.13,27,700/- which is the interest component alone is payable. The learned Government Advocate submits that the interim order of attachment made absolute by the Special Court itself clearly states that the Competent Authority shall sell 1/2 share in the first Item and if the same is not sufficient to meet out the claim of the depositors, then the sale of the other items, one by one in public auction by following the procedure for sale under Section 17(4) 17(6) of the TNPID Act, 1977 shall be undertaken and the proceeds of the same shall be distributed proportionately to the depositors. The learned Government Advocate therefore submits that the said direction protects the interest of the appellants as well. I find force in the submission of the learned Government Advocate. The impugned order provides for the



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disposal of the property in seriatim and only if the proceeds of Items 1 to 4 are found to be insufficient Item 5 would have to be sold. The amount remaining is only Rs.13,27,700/- and therefore, Item 5 may not be sold if the proceeds from the other Items fetches the said amount.

8. I find that as the appellants have failed to prove their exclusive right to Item 5 and as the directions issued by the Tribunal are found to be reasonable and justified, I am of the view that the appeals have no merits and the same deserve to be rejected.

9. Accordingly, the appeals are dismissed and there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Speaking Order : Yes/ No
Neutral Citation : Yes/No
msm



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To
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1. The Additional District Judge, Namakkal.
2. The Section Officer, V.R. Section,
High Court of Madras, Chennai-600 104.



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N. MALA, J

msm

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