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CMA.No. 1112 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM:

THE HON'BLE MRS.JUSTICE N. MALA

C.M.A.No. 1112 of 2023

Mumtaj Begum

...Petitioner

Versus

1.Mohan Kumar

2.N. Mohan

3.K.A. Akbar Basha

4.S. Mohammed Yusif

5.Jeenathunnisa

... Respondents

Civil Miscellaneous Appeal is filed under Order 43, Rule 1 of the Code of Civil Procedure, to set aside the fair and decretal order, dated 23.12.2022 passed in E.A.No. 02 of 2019 in E.P.No. 18 of 2016 in O.S.No. 100 of 2014 on the file of the Principal District Judge, Krishnagiri.

For Appellant	:	Mr.T.K. Saravanan
For RR1 to 3	:	Mr.C. Jagadish
For RR 4&5	:	Not Ready in Notice

JUDGMENT



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This Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 23.12.2022 dismissing the application filed by the appellant to lift the order of attachment.

2. It is undisputed that the 5th respondent is the daughter of the appellant. The 4th and 5th respondents entered into a Sale Agreement dated 05.08.2012 with the respondents 1 to 3 for sale of the suit A & B schedule properties and received an advance of Rs.2,34,39,333/-. As the 4th and 5th failed to perform their part of the contract, the respondents 1 to 3 filed the suit in O.S.No. 100 of 2014, on the file of Principal District Judge, Krishnagiri for return of the amount of Rs.2,34,39,333/- along with 12% interest per annum. The suit was decreed and an Execution Petition in E.P.No. 18 of 2016 was filed for recovery of a sum of Rs.2,63,10,887/- by way of attachment and sale of properties of the 4th and 5th respondents. In the EP, an order of interim attachment was passed on 26.10.2016 and thereafter, the attachment was made absolute on 30.11.2016. During the pendency of the EP proceedings and after the interim attachment order, the 5th respondent executed a settlement deed in favour of her mother, the appellant herein. The appellant therefore filed the E.A.No. 2 of 2019 under Order 21, Rule 58 CPC., to raise the attachment over the properties



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settled in her favour by the 5th respondent. The lower court on contest dismissed the EA filed by the appellant holding that the appellant was not a bonafide transferee and that the settlement was executed only to drag on the Execution Proceedings. Aggrieved by the order passed in the EA, the appellant has filed the above appeal.

3. According to the learned Counsel for the appellant the Gift/Settlement Deed was executed on 22.11.2016 well before the order of attachment was made absolute on 30.12.2016. The appellant was a third party to the suit proceedings and the Execution Court did not take note of the fact that out of the 29.43 1/2 acres of land, the fifth respondent was settled only 4.35 acres of land and therefore, inclusion of the entire property for auction sale was not warranted. In any event, sufficient opportunity was not given to the appellant to contest the attachment proceedings. The learned counsel submitted that the “B” schedule properties settled in favour of the appellant could not be attached in execution proceedings as there was no necessity for the same, that the Executing Court ought to have determined the liability of the respondents 4 and 5 and given an opportunity to the appellant to satisfy the same before dismissing the application. The learned counsel further submitted



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that entire property could not be brought to sale and that the appellant was well within her rights in challenging the attachment order as she was a bonafide transferee.

4. The learned counsel for the respondents 1 to 3 on the other hand, submitted that the appellant was not a bonafide/transferee. The appellant is none other than the mother of the fifth respondent as well as the mother in law of the fourth respondent herein. The appellant was fully aware of the suit proceedings and after the suit was decreed, she was set up by the respondents 4 and 5 to file the Execution Application. According to the counsel, the appellant filed the Execution Application only to defraud and delay the execution proceedings. The learned counsel therefore, submitted that there was absolutely no merit in the appeal and the same deserved to be dismissed.

5. Heard both sides and perused the materials placed on record.

6. The core issue to be decided in the appeal is whether the order passed by the lower Court is sustainable or not.

7. The facts of the case are undisputed. Undoubtedly the



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appellant is the mother of the 5th respondent against whom an order of interim attachment order dated 26.10.2016 was passed in the EP filed by the respondents 1 to 3. It is the case of the appellant that she was not aware of the Execution Proceedings or the interim attachment order and that she got knowledge of the same only when she applied for encumbrance certificate while raising a loan from the bank. It is seen that interim attachment order in EP was passed on 26.10.2016. The 5th respondent who was a party to the EP proceedings executed a settlement deed in favour of her mother, the appellant herein on 22.11.2016. Therefore, the trial Court considering the close relationship between the appellant and the 4th and 5th respondents rightly held that the appellant could not feign ignorance of the attachment proceedings. The trial Court looking at the circumstances under which the settlement deed was executed in favour of the appellant, rightly held that the appellant was not a bonafide transferee and that settlement deed was executed only to delay and defraud the respondents herein. As on the date of the execution petition, the judgment debtor (i.e) the 5th respondent was the owner of the property and as the appellant was settled the attached properties during the pendency of the EP proceedings and after the interim attachment order dated 26.10.2016, I am of the view that the order passed by the Principal



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District Judge is unsustainable and hence, the same is confirmed.

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8. In any event, the appellant is a pendentitelite transferee and hence, the respondents 1 to 3 are entitled to avoid the transfer in favour of the appellant, moreso when on facts it is clear that the transfer was not bonafide. Hence, I find no merits in the appeal and the same is dismissed.

9. In view of the foregoing reasons, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

19.06.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
MSM

To

1. The Principal District Judge, Krishnagiri.
2. The Section Officer, V.R.Section
High Court, Madras.



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N. MALA, J.

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