BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.(MD)No.364 of 2010

Arumugam Pillai, S/o.Palanimuthu Pillai ... Appellant

vs.

1.N.Alagarsamy
2.Sethuraj, S/o.Velu Pillai ... Respondents

Prayer :- Civil Miscellaneous Appeal filed under Order 21 Rule 58(4) C.P.C., against the order dated 24.02.1986 in E.A.No.852 of 1984 in E.P.No.148 of 1984 in O.S.No.394 of 1983, on the file of the III Additional Sub-Court, Madurai.

For Appellant : Mr.C.Mahadevan
for Mr.S.Rajasekar

For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order passed by the III Additional Sub-Court, Madurai, in an Execution Application filed by N.Alagarsamy/third party [first respondent herein] under Order 21 Rule 58 read with Section 151 C.P.C.

2. The brief facts of the case is that one Sethuraj [second respondent herein], who was running a chit business, incurred loss and to discharge his liability

and meeting out his family expenses, he borrowed Rs.14,000/- from Arumugam Pillai on 03.03.1975 and executed a pro-note in favour of Arumugam Pillai. Since he did not repay the amount with accrued interest at the rate of 1% p.m., a suit was filed in O.S.No.218 of 1976 before the Sub-Court, Dindigul, and an order of attachment before judgment was passed in I.A.No.870 of 1976. Later, the suit came to be dismissed in view of enactment of the Tamil Nadu Indebted Agriculturists [Temporary Relief] Act, 1976 [Act 15 of 1976]. Since the suit was dismissed, the plaintiff Arumugam Pillai was waiting for the expiry of moratorium period of 2 ½ years and thereafter, preferred O.S.No.16 of 1980 before the Sub-Court, Dindigul, and the same was transferred to the III Additional Sub-Court, Madurai, and renumbered as O.S.No.394 of 1983. Since the suit was allowed and decree was passed in favour of the plaintiff, for execution of the decree, he filed E.P.No.148 of 1984 for attachment of the property and the same was also attached by the Court below.

2.1. While so, N.Alagarsamy, third party [first respondent herein] filed a petition to raise the attachment on the premise that he had purchased the property from Sethuraj, vide sale deed, dated 05.04.1977, for valuable consideration of Rs.15,000/-. Before the Execution Court, objection statement was filed by the decree holder stating that even before the advent of Act 15 of 1976, he had the benefit of attachment before judgment and only when the Act came into operation, the suit came to be dismissed.

2.2. After the moratorium period, fresh suit was filed. In the said suit, he had obtained decree and also the property was attached. The third party, who claims to be the bona fide purchaser, in the interregnum period, cannot have the benefit of the transaction, since Section 6 of the Act 15 of 1976 says such transaction are presumed to be done with an intent to defeat or delay the creditors transferor. However, the Execution Court has allowed the objection petition and raised the attachment. Aggrieved by the said order, the present Civil Miscellaneous Appeal is filed.

3. In spite of notice, there is no representation for the respondents.

4. The learned counsel for the appellant/decree holder submitted that the suit for recovery of money based on the pro-note was filed as early as in the year 1976 much prior to the advent of the Tamil Nadu Indebted Agriculturists [Temporary Relief] Act, 1976 [Act 15 of 1976]. An interim order of attachment before judgment was also granted in his favour. After the Act 15 of 1976 came into force on 17.04.1976, suit for recovery of debt payable by an Agriculturist has been stayed under the Act. The Act granted temporary relief to the Agriculturists. However, to avoid defeating the interest of the creditor, under Section 6 of the Act, there is a presumption that if any debtor, who is entitled for the benefit of Section 3 or 4 of the Act transfers the property, it is to be presumed that such transfer done with an intent

to defeat or delay the creditors. Therefore, the learned counsel submitted that even if assuming the property was purchased by the third party, such transfer presumed to be intended to defeat and delay the creditor's interest. In such circumstances, the order of the Court below holding that the decree holder ought to have filed a suit to declare the subsequent transaction as null and void is legally unsustainable, when there is a statutory presumption against such transfers.

5. This Court scrupulously examined the contentions raised by the learned counsel in the light of Section 6 of the Act 15 of 1976, which reads as below:-

> *"6. Effect of transfer of immovable property by the debtor. - Every transfer of immovable property by a debtor entitled to the benefit of section 3 or section 4, made on or after the date of commencement of this Act and before the expiry of [two years and six months] from the said date shall, in any suit or other proceeding, with respect to such transfer, be presumed, until the contrary is proved, to have been made with intent to defeat or delay the creditors of the transferor."*

6. As per Sections 3 and 4 of the Act 15 of 1976, for filing of any suit for recovery of debt, the moratorium period is 2 ½ years from the date of commencement of the Act and if any such proceedings pending for recovery of debt, the same shall stand stayed till the expiry of 2 ½ years from the date of commencement of the Act. Since this Act has come into force from 17.04.1976, 2 ½ years moratorium period got expired on 16.10.1978.

7. In this case, the appellant has instituted the suit in the year 1976. By virtue of Section 4 of the Act, all further proceedings in the suit, stands stayed and the property attached deemed to become free from encumbrance. The Court below should have passed necessary orders for the custody of preservation of the property as per proviso to Section 4 of the said Act. Unfortunately, in this case, such order has not been passed by the Court below, but the said suit came to be dismissed with liberty to the plaintiff to file a fresh suit after expiry of the moratorium period. Accordingly, the plaintiff has preferred suit in the year 1980, which was transferred from Dindigul to Madurai and decree was passed in the year 1984. When the Statute provides bar for instituting suit for recovery of the debt and at the same time, has provided a protection to the creditor, the Act has to be read as a whole and the protection order given to the debtor cannot be misused or abused by the creditor. The property was already under attachment even before judgment. Taking advantage of the dismissal of the suit, just because there was a moratorium period to proceed, the creditor has stealthily transferred the property in the name of the third party [N.Alagarsamy].

8. Ignoring the presumption under Section 6 of the Act, the Court below has allowed the E.A. This Court holds that the order passed in E.A.No.852 of 1984, dated 24.02.1986, is contrary to law and against the spirit of the law envisaged under Section 6 of the Act, hence, liable to be set aside. Accordingly, the order is set aside.

9. In fine, this Civil Miscellaneous Appeal is allowed. No order as to costs.

NCC : Yes / No **22.02.2023**
Index : Yes / No
To

1.The III Additional Sub-Judge,
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

DR.G.JAYACHANDRAN, J.

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JUDGMENT MADE IN
C.M.A.(MD)No.364 of 2010

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