



C.R.P(MD)No.431 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **09.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.431 of 2019

and

C.M.P(MD)No.2155 of 2019

Ravindran

... Petitioner/1st Respondent/
Petitioner/Plaintiff

Vs.

1.Somasundaram

...1st Respondent/Petitioner/
Claimant/Third Party

Ponnaiah (Died)

...Nil/2nd Respondent/
2nd Respondent/
Defendant

2.Indira

3.Vanitha

4.Madhavi

5.Vimala

...Respondents 2 to 5/
Respondents 3 to 6/
Respondents 3 to 6/
Defendants

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order passed in E.A.No.55 of 2012 in E.P.No.85 of 2010 in O.S.No.92 of 2008, dated 08.10.2018 on the file of the Subordinate Court, Devakottai and set aside the same.



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For Petitioner : Mr.C.Jeyaprakash
For R1, R2, R4 & R5 : No Appearance
For R3 : Dismissed for Default
(vide order dated 03.12.2021)

ORDER

This civil revision petition has been filed against the order passed by the Subordinate Court, Devakottai in E.A.No.55 of 2012 in E.P.No. 85 of 2010 in O.S.No.92 of 2008, dated 08.10.2018.

2. The learned counsel for the petitioner submits that he has filed a suit for recovery against one Mr.Ponnaiah in O.S.No.92 of 2008. The learned counsel further submits that during the pendency of the said suit, he moved an application for attachment before judgment in I.A.No.388 of 2008, and in which the attachment of petition mentioned property was ordered on 01.12.2008. It is the submission of the learned counsel for the petitioner that he moved an execution petition in E.P.No.85 of 2010 for the sale of the attached property. In which the first respondent herein has moved an application to raise the attachment on the ground that he had a sale agreement prior to the attachment. He would further submit that the defendant in the suit has never informed the such sale agreement before



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the Court of law and that there was a long delay in filing an application to set aside the order of attachment. Therefore, contended that the order passed by the Court below raising the attachment is contrary to law. Hence, prayed to allow the civil revision petition.

3. I have given my anxious consideration to either side submissions.

4. The very submission put-forth by the learned counsel for the petitioner is that, whether the third party claimant has established the existence of sale agreement prior to the attachment order, dated 01.12.2008. In this regard, this Court while referring the claim application under Order 21 Rule 58 of C.P.C., the claimant has stated that, there was an oral agreement on 17.12.2007 and subsequent to that, the sale agreement was registered on 07.01.2008 and in pursuance of the sale agreement he obtained a sale deed during the year 2011.

5. However, the learned counsel for the petitioner would vehemently submits that since the sale deed is of the year 2011 that too subsequent to the attachment and such sale is void. Therefore, dismissal of the E.P. is contrary to law. However, while pursuing the order of the



Court below, the Court below has referred to Section 64 (2) of C.P.C. For ready reference, Section 64 (2) of C.P.C., is extracted hereunder:

"64. Private alienation of property after attachment to be void.

1...

2. Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment."

6. As per the above section, the exception has been given to the sale agreement, which was entered into parties prior to the attachment. The learned counsel for the petitioner would submit that such registered sale agreement did not find a place in encumbrance certificate. To substantiate such fact, the petitioner also appeared to have filed encumbrance certificate as Exhibit R1. Notwithstanding the absence of any reference in encumbrance certificate, the fact remains that there was a registered sale agreement on 07.01.2018 in favour of the claimant. Therefore, such sale agreement is admittedly prior to the attachment order, dated 01.12.2018. Therefore, the same would come within the exception under Section 64 (2) of C.P.C. Therefore, the order passed by the Court below allowing the application so as to raise the attachment could not be found fault with.



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7. In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Subordinate Court,
Devakottai.

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



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C.KUMARAPPAN,J.

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