



C.R.P(MD)Nos.498 & 499 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On:02.11.2023 Pronounced on:

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)Nos.498 & 499 of 2018 (PD)

and

C.M.P(MD)No.2183 of 2018

D.Pankiraj

... Petitioner in both CRPs

vs.

1.A.Innasi

(Represented by his Power of Attorney Holder

S.Selvarani,

W/o.Innasi)

... 1st Respondent

in both CRPS

2.S.Jerone David

... 2nd Respondent in both CRPs

PRAYER in C.R.P(MD)No.498 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 24.11.2017 made in I.A.No.94/2015 in O.S.No. 23/2015 on the file of the Subordinate Court, Padmanabhapuram.

PRAYER in C.R.P(MD)No.499 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.11.2017 made in I.A.No.52/2017 in O.S.No. 23/2015 on the file of the Subordinate Court, Padmanabhapuram.



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For Petitioner	:Mr.R.Devaraj
in both CRPs'	
For Respondents	:No appearance
in both CRPs'	

COMMON ORDER

These revision petitions have been preferred by the purchaser/petitioner, pending the suit in O.S.No.23 of 2015.

2. The brief facts to decide the present revisions are as follows:-

The first respondent, as a plaintiff, filed a suit in O.S.No.23 of 2015 before the Sub-Court, Padmanabhapuram for recovery of a sum of Rs.4,73,000/- from the defendant, namely, Mr.S.Jerone David, who is the second respondent in these revisions. Along with the suit, the plaintiff filed an application in I.A.No.41 of 2015 seeking attachment before judgment of the properties belonging to the defendant in the suit. The trial Court ordered the said petition and pursuant to which, the bailiff of the concerned Court effected the attachment. It is the case of the revision petitioner that he has purchased the property from the defendant on 12.02.2015. He came to know about the pendency of the suit as well as



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the order of attachment only after the bailiff pasted the notice.

Thereafter, the petitioner filed I.A.No.94 of 2015 seeking to implead himself as a respondent in I.A.No.41 of 2015, which was the application filed under Order 38, Rule 5 of CPC. The said application was pending for want of service of notice on the defendant in the suit. It is the grievance of the revision petitioner that, despite his I.A.No.94 of 2015 pending before the very same Court, the Court proceeded to order attachment of the petition mentioned property on 04.11.2016 by allowing I.A.No.41 of 2015 without giving an opportunity of hearing to the revision petitioner.

3. Therefore, the petitioner was constrained to taken out another application in I.A.No.52 of 2017 seeking to raise the order of attachment under Order XXI Rule 58-3(a) of CPC. The trial Court thereafter took up all the three applications, namely, I.A.No.41 of 2015 filed by the plaintiff under Order 38 Rule 5 of CPC, I.A.No.94 of 2015 filed by the revision petitioner seeking to implead himself as respondent in I.A.No.41 of 2015 and I.A.No.52 of 2017 filed by the revision petitioner to raise the order of attachment. In and by a common order, dated 24.11.2017, the trial Court dismissed the applications filed by the revision petitioner in



5. The following dates would be relevant to decide the issues in the revisions. Date of filing of the suit is 28.01.2015. The suit was taken on file on 06.02.2015. The revision petitioner purchased the property on 12.02.2015. The order in I.A.No.41 of 2015 calling upon the defendant to furnish the security was made on 20.02.2015.

6. It is to be borne in mind that the suit is for recovery of money based on a promissory note executed by the defendant in favour of the plaintiff. Though there is an averment in the plaint that the defendant has handed over the original title deed relating to the property to the plaintiff as a security for repayment of the debt, the suit has been not instituted for recovery on the mortgage deed and the suit is filed only for recovery of money based on the promissory note. The cause of action pleaded in the plaint is also on the same lines and there is no whisper with regard to the property having given as a security to the plaintiff.

7. Admittedly, on the date of attachment being effected by the Court, in furtherance of the order passed in I.A.No.41 of 2015, the defendant was not having any subsisting right or interest in the subject property, he having already conveyed the same in favour of the revision



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petitioner, by executing a registered sale deed dated 12.02.2015. The trial Court has made a roving discussion with regard to the bonafides and lack of it on the part of the revision petitioner and that he has not given any paper publication before purchasing the property and that he had hurriedly proceeded to purchase the property to defeat the claim of the plaintiff.

8. I find that there is absolutely no evidence available before the trial Court to arrive at such findings. Further, the observations of the trial Court that the purchaser of the property should give paper publication before purchasing the property, is also totally un-warranted.

9. Even though, the original sale deed, dated 09.06.2020 which was standing in the name of the defendant was in the custody of the plaintiff, the same alone cannot be a ground to render a finding that the revision petitioner was not a bonafide purchaser. Equally, non appearance on behalf of the defendant in the suit cannot be put against the revision petitioner, who has admittedly parted with valuable sale consideration and purchased the property in and by a valid and registered sale deed. The further observation of the trial Court that the sale is hit by



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doctrine of *lis pendens*, is also erroneous and necessarily has to be set aside for the simple reason that the suit is one for recovery of money based on a promissory note. Therefore, in the absence of any interest pertaining to the said property being the subject matter of the suit, the revision petitioner cannot be put to a disadvantage by citing the doctrine of *lis pendens*. Further, the revision petitioner has taken immediate steps even before the order of attachment came to be passed, by taking out an application to implead himself as a respondent in I.A.No.41 of 2015 which was filed for attachment before judgment. In the said affidavit, he has clearly stated that the property has been purchased by him and without passing an order in the said application, the trial Court, at the first instance ordered attachment which necessitated the revision petitioner to take out the second application in I.A.No.52 of 2017. Of Course, subsequently the trial Court has afforded an opportunity to the revision petitioner and decided all the three applications namely I.A.No. 41 of 2015, I.A.No.94 of 2015 and I.A.No.52 of 2017 jointly and in and by which the common impugned order was passed, upholding the order of attachment.



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10. Under Order 38 Rule 5 of CPC, the Court can only order attachment of the property belonging to the defendant. Admittedly, on the date of ordering attachment before the judgment, the Court was put on notice that the property had been sold to the revision petitioner and in such circumstances, the Court clearly fell in error in ordering attachment and subsequently, confirming the same despite valid objections taken by the revision petitioner. The Court has also given findings which were totally unwarranted and without affording an opportunity to the revision petitioner to state his case before the Court.

11. Further, Order 38 Rule 10 of CPC protects the interest of the revision petitioner in the present case. Order 38 Rule 10 of CPC is extracted for ready reference:-

“Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.”



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Thus, the trial Court clearly fell in error in not applying the provisions of Order 38 Rule 10 of CPC to the facts of the present case.

12. For all the above reasons, I deem it fit to set aside the order dated 24.11.2017 made in I.A.No.94 of 2015 and I.A.No.52 of 2017 passed by the Sub-Court, Padmanabhapuram.

13. In the result, these Civil Revision Petitions stand allowed and the order passed in I.A.No.94 of 2015 as well as to I.A.No.52 of 2017 are set aside. No costs. Consequently, connected miscellaneous petition is closed.

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
AM

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To
The Subordinate Court,
Padmanabhapuram.



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P.B.BALAJI,J.

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