



C.R.P.(MD)No.1820 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2023

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.1820 of 2014

SP.Alagappan

... Petitioner

Vs.

1.Krishnaveni

2.L.Vijayalakshmi

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside fair and decreetal order dated 10.04.2014 in E.P.No.79 of 2013 in O.S.No.29 of 2009 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.

For Petitioner : Mr.VR.Shanmuganathan

For R-1 : Mr.S.Manikandan

For R-2 : Dismissed



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ORDER

This civil revision petition has been preferred by the decree holder in O.S.No.29 of 2009 on the file of the Principal District Munsif cum Judicial Magistrate, Karaikudi as against the dismissal order of the execution petition in E.P.No.79 of 2013 in O.S.No.29 of 2009 dated 10.04.2014. For the sake of convenience the parties herein are arrayed as in E.P.No.79 of 2013.

2. The revision petitioner is the decree holder in O.S.No.29 of 2009, which was filed for recovery of money to the tune of Rs.43,500/- with 9% interest and the same was decreed in favour of the revision petitioner. At the first instance, the revision petitioner filed an execution petition in E.P.No.37 of 2011 seeking attachment of the house in which the judgment debtor was residing. However, the judgment debtor filed a counter stating that she has no title over the house and she is residing in the said house as a tenant, which belongs to the Ariyakudi Arulmigu Thiruvengamudaiyan Devasthanam and she is given with a part of land for lease and hence the decree holder cannot attach the same. In view of



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the counter filed by the judgment debtor, the execution petition was not pressed by the decree holder. Thereafter, second execution petition, was filed before the Principal District Munsif cum Judicial Magistrate, Karaikudi in E.P.No.79 of 2013 wherein the revision petitioner prayed that since the judgment debtor is not the owner of the land, the superstructure built by the judgment debtor shall be attached. The judgment debtor filed counter stating that the description of the property ie. door number, survey number, street name etc., are not properly stated. Hence, the execution petition is liable to be dismissed. On consideration of the submissions, made by either parties, the trial Court dismissed the execution petition vide order dated 10.04.2014, in which, it was observed that the petitioner sought only to attach the roof of the building and the petitioner failed to prove the ownership of the judgment debtor with respect to the petition scheduled property. Hence, the present civil revision petition came to be filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner filed execution petition to get the superstructure built by the judgment debtor attached. He further took me into the various



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grounds of the Revision Petition and sought to set aside the order passed by the execution Court in E.P.No.79 of 2013.

4. Per contra, the learned counsel for the respondent/judgment debtor submitted that the attachment sought for by the petitioner cannot be effected in the execution proceedings and more over, the second respondent, who is the daughter of the first respondent too passed away and the first respondent is living in a house built in the land belonging to Devasthanam and hence, there is no illegality or infirmity in the order passed by the Court below and therefore, this civil revision petition is liable to dismissed. The learned counsel for the respondent/judgment debtor relied on a judgment passed by this Court in W.P.(MD)No.14428 of 2017 and the same is not applicable to the facts and circumstances of this case.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and carefully perused the materials available on record.



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6. It is seen that the petitioner is the decree holder and at the first instance, he filed an execution petition in E.P.No.37 of 2011 and the same was not pressed by the petitioner, after the filing of counter by the respondent stating that the property belonged to Ariyakudi Arulmigu Thiruvengamudaiyan Devasthanam and she is only a tenant. Thereafter, the decree holder filed another execution petition in E.P.No.79 of 2013 for attaching the superstructure of the house built by the judgment debtor. The judgment debtor has filed a counter stating that the details of the property, which was sought to be attached, were not given properly by the decree holder.

7. This Court is of the considered view that the judgment debtor is wantonly avoiding the satisfaction of her debt to the decree holder, without giving any workable solution, thereby letting the decree holder in lurch allowing him to file execution petitions one after another. Even though the respondent/judgment debtor is in penury, who is nearly 58 years old, she cannot absolve herself from her liability towards the decree holder. The suit was decreed as early as 27.01.2010 observing that the respondent/judgment debtor has to pay the decree holder a sum



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of Rs.45,457.50/- with 9% interest per annum from the date of plaint till the date of decree and thereafter, at 6% interest till date of realization.

8. Section 151 of the Code of Civil Procedure, 1908 equips the execution Court with unfettered powers to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the Court. In exercise of the extraordinary powers under Section 151 of the Code of Civil Procedure, the executing Court should contribute towards the decree-holder realising the fruits of a decree in his favour from a deceiving judgment-debtor. Here in this case, without denying her liability towards the decree holder, the judgment-debtor kept defending the Execution Petitions hyper technically by stating that the property sought to be attached does not belong to her. The execution Court without realising it's powers, with an elephant's dilemma had proceeded to dismiss the said E.P.No.79 of 2013.

9. In execution proceeding, the Executing Court has to ascertain the assets and income of the judgment-debtor to determine, whether the judgment debtor has the means to satisfy the money decree. According to



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the petitioner's Counsel in terms of Section 60(2) of the Code of Civil Procedure, 1908 houses and other buildings with the materials and the sites thereof and the lands immediately appurtenant thereto are liable to attached and sold in execution of a decree. In support of his contention that the right of occupation of a house is property both attachable and saleable. He relied upon the decision of the Hon'ble Supreme Court reported in **1975 (2) SCC 105 in the case of Ramesh Thimmatlal Shah Vs. Harsakh Jadhavji Joshi** wherein a similar issue was dealt with and the relevant paragraph is extracted hereunder:

“24. The judgment-debtor has a valid decree against him. Ordinarily he has to discharge his liability under the decree. He can pay the decretal amount straightaway or suffer his property to be attached and sold in execution of the decree. As an honest debtor the liability under the decree has to be discharged. Here the Society is not objecting to the attachment and sale of the property, but the judgment-debtor is. We have seen there is no absolute prohibition against transfer of a right to occupation of the flat or even to transfer a share. The auction-purchaser is presumed to know the limitations under which he has purchased the right to occupy the flat in Court auction. If ultimately the Society turns down



his application for membership (which of course cannot be done except for valid reasons) it is up to him to take such course of action as available under the law. Such a remote contingency, per se, will not make the particular right of the judgment-debtor in the flat non-attachable or non saleable.

25. It is contended by Mr.Chatterjee that Section 60, Civil Procedure Code, does not specify that this species of property is liable to attachment. The argument, however, fails to take note of Section 60 being not exhaustive as such. It refers also to any other saleable property, movable or immovable, whether the same be held in the name of the judgment-debtor or by another person on his behalf. We have held that the right to occupation of a flat is property both attachable and saleable. Specific non-inclusion of a particular species of property under Section 60 is, therefore, not of any consequence if it is saleable otherwise.....”

10. However, in that case the flat of the judgment-debtor was owned by the Paresh Co-operative Housing Society, governed by the Maharashtra Co-operative Societies Act, 1960. But in this case, the judgment-debtor claims that the superstructure of her dwelling house is situate in the land belonging to Ariyakudi Arulmigu



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Thiruvengkamudaiyan Devasthanam. But she consciously refrained from disclosing the details of the tenancy with respect to the property in which she is in possession. Though she admits in her counter in E.P.No.37 of 2011, that she is a tenant, she did not disclose the details of tenancy with the said Devasthanam. In such circumstances, the said Devasthanam is also a necessary party to the Execution Proceedings. Precisely this Court has come to a conclusion that the superstructure of the dwelling house of judgment-debtor is property which is attachable and saleable in execution proceedings. However this Court is of the considered view that without impleading the Devasthanam concerned in Execution Petition the judgment-debtor's superstructure may not be attached or brought to sale.

11. Order XXI, Rule 41(2) of the Code of Civil Procedure gives ample power to the trial Court to examine the judgment debtor as to his property and the same is extracted hereunder:

“Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without



prejudice to its power under sub-rule(1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.”

12. The ***Hon'ble High Court of Delhi in M/s.Bandari Engineers Builders Vs. M/s.Maharia Raj Joint Ventures and Others*** on 05.08.2020 has held that,

“8. If the judgment-debtor does not voluntarily satisfy the decree/award, the decree-holder is compelled to initiate the execution proceedings. If the decree-holder is aware of the assets of the judgment-debtor, the Executing Court attaches the assets at the very threshold of the execution proceedings. The Executing Court thereafter initiates proceedings for sale of the attached assets of the judgment-debtor.

9. If the decree-holder is not aware of the complete assets and income of the judgment-debtor, the Executing Court directs the judgment-debtor to disclose his assets in Form 16A of Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure.



10. Form 16A of Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure is not exhaustive to ascertain all the assets and income of the judgment-debtor. As a result, the execution proceedings keep on lingering at the mercy of the judgment-debtor.”

which is why in ***Satyawati Vs. Rajinder Singh (2013) 9 SCC 491***, the Hon'ble Supreme Court quoted the Privy Council's judgment of 1872 that the difficulties of a litigant in India begin when he has obtained a decree and observed that the position has not improved and the decree-holders still face the same problems.

13. That apart, Article 227 confers on this Court the power of Superintendence over the subordinate Courts. The primordial reason to vest this Court with such wide power of superintendence is to do substantial justice by undoing the difficulties faced by the litigants. In view of the above, this Court is of the considered view that this matter has to be remitted back to the execution Court, Karaikudi. Accordingly, the matter is remitted back to the Principal District Munsif Court, Kariakudi by issuing the following directions:



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“(i)The Court below shall direct the judgment debtor to file an affidavit by disclosing the complete details of her assets and income along with the details of her bank account and detailed information as to her tenancy with respect to the petition scheduled property as required in Form 16A in the Order XXI, Rule 41(2) CPC.,

(ii) In case the tenancy rights of the judgment-debtor is found to be absolute, the Revision Petitioner shall be directed to implead Ariyakudi Arulmigu Thiruvankamudaiyan Devasthanam as the third respondent, and thereafter adjudicate the Execution Proceedings.

(iii) In case of any clog over the judgment debtor's tenancy rights with respect to the petition scheduled property, then the revision petitioner is at liberty to prefer a fresh execution petition before the execution Court to arrest the judgment debtor.”

14. With the above directions, this civil revision petition stands allowed and the order passed by the Principal District Munsif cum



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Judicial Magistrate, Karaikudi in E.P.No.79 of 2013 dated 10.04.2014 is set aside. No costs.

03.03.2023

NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Principal District Munsif cum Judicial Magistrate,
Karaikudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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