



C.R.P.(MD) No.2126 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2126 of 2022

1.Palaniammal

2.Ganeshaperumal

... Petitioners

Vs.

1.Mala

2.Kiruthika

3.Ganthimathiammal

... Respondents

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the return order dated 10.09.2022 and direct the I Additional District Munsif Court, Dindigul to number the unnumbered I.A. of 2022 on its file.

For Petitioners : Mr.G.Gomathi Sankar

For Respondents : No appearance

ORDER

This Civil Revision Petition has been preferred by the petitioners to set aside the impugned return order dated 10.09.2022 passed in unnumbered I.A.



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of 2022 in O.S.No.1806 of 1990 on the file of the I Additional District Munsif Court, Dindigul and to direct the learned I Additional District Munsif, Dindigul to number the said I.A. and dispose the same on merits.

2. The above suit in O.S.No.1806 of 1990 was filed by the petitioners claiming monthly maintenance of Rs.300/- from the husband of the first petitioner and for creation of charge over the 'A' suit schedule property. During the pendency of the suit, the husband of the first petitioner sold the 'A' suit schedule property in favour of the first respondent herein. By a Judgment and Decree dated 28.11.1997, the husband of the first petitioner was directed to pay a sum of Rs.300/- towards monthly maintenance and charge was also created over the 'A' suit schedule property, against which, the husband of the first petitioner filed an appeal before the Principal District Court, Dindigul in A.S.No.10 of 1998.

3. *Vide* Judgment and Decree dated 20.06.2001 in A.S.No.10 of 1998, the learned Principal District Judge, Dindigul confirmed the monthly maintenance of Rs.300/- to be paid by the first petitioner's husband and set aside the creation of charge over the 'A' suit schedule property which was sold by the first petitioner's husband in favour of the first respondent herein, against



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which, the petitioners herein preferred the second appeal before this Court in

S.A.No.1807 of 2002. By an order dated 28.09.2021 in S.A.No.1807 of 2002,

this Court observed as follows:-

7. The suit was filed some time in the year 1984. We are now in the year 2021. Therefore, the amount of arrears recoverable from the suit property comes to not less than Rs. 1,36,800/-. The first plaintiff is said to be aged around 80 years. I assume that she has another 10 years. The purpose of creating charge over the property is only to ensure that money claim is enforceable. If the first respondent pays a sum of Rs.2,00,000/- to the first plaintiff, then, the purpose for creating charge would stand fulfilled. The first appellate court failed to take note of Section 39 of the Transfer of Property Act. Here is the case where the purchaser purchased the property knowing fully well about the pendency of the maintenance claim between the plaintiffs on the one hand and the first defendant on the S.A.No.1807 of 2002 other. Ex.A1 is the copy of the notice issued to the contesting defendant. It is not the case of the contesting defendant that she did not receive the notice. Only if the transferee did not have notice of the plaintiff's right on the property, Section 39 of the Transfer of Property Act, 1882 can be pressed into service. In this case, the transferee had clear notice of the appellant's right. Therefore, I answer the substantial question of law in favour of the appellants. The judgment and decree passed by the first appellate court is set aside. The decision of the trial court is restored. **However, if the first respondent deposits a sum of Rs.2,00,000/- within five months to the credit of O.S.No.1806 of 1990 on the file of the Additional District Munsif, Dindigul, the creation of charge over the "A" schedule property would stand cancelled.** On such deposit, the trial court is directed to send a communication to the jurisdictional sub registrar for entering the same in the encumbrance register. The second appeal is allowed with this direction. Registry to



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return the records to the Additional District Munsif, Dindigul without any delay. No costs.

4. Accordingly, the first respondent deposited a sum of Rs.2,00,000/- to the credit of O.S.No.1806 of 1990. Thereafter, the petitioners moved an application for withdrawal of the said amount and the same was returned by the Trial Court *vide* impugned order dated 10.09.2022 by stating that there is no specific direction in the order dated 28.09.2021 passed by this Court in S.A.No. 1807 of 2002 to withdraw the amount deposited by the first respondent. Aggrieved by this, the petitioners moved this Civil Revision Petition to set aside the return order dated 10.09.2022 and to direct the learned I Additional District Munsif, Dindigul to number the I.A. and permit them to withdraw the said amount deposited by the first respondent.

5. The learned counsel appearing for the petitioners would submit that though there was a categorical observation made by this Court in the order dated 28.09.2021 in S.A.No.1807 of 2002 that if the first respondent deposits a sum of Rs.2,00,000/- within a period of five months to the credit of the suit, the creation of charge over the 'A' suit schedule property would stand cancelled, the Trial Court has erroneously declined to number the I.A. filed by the petitioners for withdrawal of the said amount.



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6. Heard the learned counsel for the petitioners. Perused the records.

7. Admittedly, the petitioners herein filed the suit in O.S.No.1806 of 1990 claiming monthly maintenance from the husband of the first petitioner and during the pendency of the suit, the husband of the first petitioner sold the property to the first respondent herein. Hence, the petitioners have made a claim that the first respondent is liable to pay the maintenance as the 'A' suit schedule property was purchased by her from the first petitioner's husband with the knowledge about the pending of the maintenance suit.

8. Admittedly, the suit was decreed in favour of the petitioners and charge was created over the 'A' suit schedule property, against which, the first petitioner's husband filed A.S.No.10 of 1998 on the file of the Principal District Court, Dindigul which was partly allowed, against which, S.A.No.1807 of 2002 was filed by the petitioners before this Court. As per the directions of this Court in the order dated 28.09.2021 passed in S.A.No.1807 of 2002, the first respondent deposited a sum of Rs.2,00,000/-. Thereafter, the petitioners filed an application for withdrawal of the said amount of Rs.2,00,000/-. However, the Trial Court without numbering the said application returned the



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same by stating that there is no specific direction in S.A.No.1807 of 2002 as to who has to withdraw the said amount.

9. On perusal of the order dated 28.09.2021 passed in S.A.No.1807 of 2002, there is a categorical finding that if the first respondent deposits a sum of Rs.2,00,000/- within a period of five months to the credit of the suit, creation of charge over the 'A' suit schedule property would stand cancelled. Even though there is no specific direction with regard to the withdrawal of the amount by the petitioners, the intention of this Court in the order dated 28.09.2021 passed in S.A.No.1807 of 2002 reflects that the petitioners are entitled to withdraw the amount deposited by the first respondent. It is crystal clear that the petitioners are entitled to withdraw the amount of Rs.2,00,000/- which was deposited by the first respondent to the credit of the suit.

10. Therefore, the impugned return order dated 10.09.2022 passed by the learned I Additional District Munsif, Dindigul in the unnumbered I.A. of 2022 in O.S.No.1806 of 1990 is set aside and the learned I Additional District Munsif, Dindigul is directed to number the said application filed by the petitioners for withdrawal of the amount deposited by the first respondent to the credit of the suit in O.S.No.1806 of 1990 as per the direction of this Court



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in S.A.No.1807 of 2002 and dispose the same on merits, within a period of 2 months from the date of receipt of a copy of this order.

11. Accordingly, this Civil Revision Petition is allowed. No cost.

16.08.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To : The I Additional District Munsif,
Dindigul.

Note: The Registry is directed to return the original petition to the learned counsel for the petitioners to re-present the same before the Court below.



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K.GOVINDARAJAN THILAKAVADI, J.

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