



WEB COPY



C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.06.2023

Pronounced on : 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

and

C.M.P(MD)Nos.8316 and 8317 of 2018

1.R.Amirthapandian

2.A.Karthigaiselvi

... Petitioners/Claimants
in both CRPs

Vs.

1.M/s.Arooran Sugars Ltd.,
through its President and
Chief Operating Officer,
No.112, Uthamar Gandhi Salai,
Chennai – 600 034.

... 1st Respondent/Plaintiff
in both CRPs

2.J.Mayil Vahanan,
Proprietor of T.J.S.Mayil Vahanan & Co.,
Selvijer Street,
Thoothukudi – 2.

...2nd Respondent/Defendant
in both CRPs

PRAYER in C.R.P(NPD)(MD)No.1920 of 2018: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 07.07.2018 passed in E.A.No.217 of 2017 in E.A.No.120 of 2016 in E.A.No.30 of 2014 in E.P.No.46 of 2012 in O.S.No.225 of 2012 on the file of the Sub Court, Thoothukudi.



C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

PRAYER in C.R.P(NPD)(MD)No.1921 of 2018: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 07.07.2018 passed in E.A.No.218 of 2017 in E.A.No.119 of 2016 in E.A.No.29 of 2014 in E.P.No.45 of 2012 in O.S.No.226 of 2012 on the file of the Sub Court, Thoothukudi.

For Petitioners : Mr.G.Prabhu Rajadurai in both CRPs

For Respondents : No Appearance in both CRPs.

COMMON ORDER

The Civil Revision Petition in C.R.P(NPD)(MD)No.1920 of 2018 is filed against the fair order and decretal order dated 07.07.2018 passed in E.A.No.217 of 2017 in E.A.No.120 of 2016 in E.A.No.30 of 2014 in E.P.No.46 of 2012 in O.S.No.225 of 2012 on the file of the Sub Court, Thoothukudi.

2. The Civil Revision Petition in C.R.P(NPD)(MD)No.1921 of 2018 is filed against the fair order and decretal order dated 07.07.2018 passed in E.A.No.218 of 2017 in E.A.No.119 of 2016 in E.A.No.29 of 2014 in E.P.No.45 of 2012 in O.S.No.226 of 2012 on the file of the Sub Court, Thoothukudi.



WEB COPY



C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

3. The brief facts of the case:

The first respondent/plaintiff filed suits in O.S.No.225 of 2012 and 226 of 2012 on the file of the Sub Court, Thoothukudi for recovery of money against the second respondent. The suits were decreed. The first respondent has filed a Execution Petitions in E.P.No.46 of 2012 and 45 of 2012 in respective suits for recovery of money by selling the petition mentioned properties. The revision petitioners have filed the claim petitions in E.A.Nos.29 of 2014 and 30 of 2014 under Order 21 Rule 58 and Section 151 of the Civil Procedure Code. Both petitions were "dismissed for default" and to restore those petitions, E.A.Nos.119 of 2016 and 120 of 2016 were filed which were also "dismissed for default". The revision petitioners have filed the petitions in E.A.Nos.217 of 2017 and 218 of 2017 to restore the petitions in E.A.Nos.119 of 2016 and 120 of 2016. The petitions were resisted by the respondents. After hearing both the Executing Court has dismissed both petitions. Aggrieved by the orders of the Executing Court, the revision petitioners/claim petitioners approached this Court by way of these respective Civil Revision Petitions.

4. Heard the learned counsel for the petitioners. There is no representation for the respondents in spite of sufficient opportunities



given and perused the records in these Civil Revision Petitions.

WEB COPY

5. The learned counsel appearing for the revision petitioners has submitted his arguments that the first respondent has filed the main suits for recovery of money against the second respondent and after a decree passed in favour of the first respondent, it has filed the execution petitions by selling the petition mentioned properties. One of the properties belonged to the revision petitioners. The revision petitioners are *bona-fide* purchasers of the petition mentioned property from its original vendor, who purchased the same through Court auction in the year 2004. Because of the non-appearance of the revision petitioners, the claim petitions were dismissed, and subsequent petitions to restore the same were also dismissed. During pendency of suits, there was no order of attachment before judgment. Properties were attached only in the execution proceedings. There is no attachment reflected in the encumbrance certificate. The revision petitioners have merit case. The revision petitioners cannot file a separate suit and they can claim right over their property since it was attached by Executing Court. The right of the revision petitioner could not be deprived. The Executing Court without considering the facts and circumstances of the case dismissed both petitions. Therefore, the Civil Revision Petitions may be allowed.



In support of his argument, the learned counsel for the revision petitioners has relied on the following citations:

1. 2000 (II) CTC 524 (Sri Krishna Chit Funds (Sattur Private Limited) through its Managing Director R.Umayal Vs. R.S.Pillai and Anr.), wherein it is held in paragraph No.23 as follows:

“23.The appellant had purchased the property on 24.12.97. It is also clear that the encumbrance certificate was issued after verifying the encumbrance and other particulars available from the registers maintained in the Sub Registrar’s office for the period upto 30.12.1997. in this encumbrance certificate, the entry as to attachment before judgment does not find a place. In such a circumstance, there is no possibility of the appellant knowing the order of attachment; accordingly I am of the view that the Courts below committed an error in holding that the appellant had knowledge about the attachment.....”.

2. (2019) 5 Supreme Court Cases 144 (Commissioner, Mysore Urban Development Authority Vs. S.S.Sarvesh), wherein it is held in paragraph No.19 as follows:

“19. In our view, the courts below should have seen that the first appeal is a valuable right of the appellant and, therefore, the appellant Authority was entitled for an opportunity to



WEB COPY



C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

prosecute their appeal on merits. If the appellant's advocate did not appear may be for myriad reasons, the Court could have imposed some costs on them for restoration of their appeal to compensate the respondent (plaintiff) instead of depriving them of their valuable right to prosecute the appeal on merits. This is what Vivian Bose, J. has reminded to the courts while dealing with the cases of this nature in Sangram Singh to do substantial justice to both the parties to the lis. Indeed, dismissal of the appeal in default and dismissal of the appeal on merits makes a difference. The former dismissal is behind the back of the litigant and latter dismissal is after hearing the litigant. The latter is always preferred than the former” .

6. On hearing the learned counsel for the revision petitioners and on perusal of records, it is clear that the first respondent/plaintiff has filed two suits against the second respondent for recovery of money and there is no attachment before judgment. After the suits were decreed, the first respondent filed the execution petitions mentioning three items of properties and one of them belonged to the petitioners, as stated in the petitions. The revision petitioners have filed the claim petitions on the ground that their vendor, who purchased the property through Court auction in the year 2004 and also verified the encumbrance certificate



C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

from 01.01.1993 to 31.01.2007 and later they received an order of attachment, which was revealed in encumbrance certificate. Though the claim petitions were "dismissed for default", the revision petitioners have filed the petitions to restore the same. The said petitions also "dismissed for default". On perusal of the citations relied on by the revision petitioners, since there is no mention of attachment in the encumbrance certificate and the right of the litigant should not be deprived to contest on merits. Though these are not to be considered in the nature of restoration petitions, as rightly contended by the learned counsel for the revision petitioners, the revision petitioners cannot file a separate suit as they are *bona-fide* purchaser through his vendor, who purchased the property through Court auction and the revision petitioners may be given an opportunity to put forth their case in execution proceedings. The contentions of the revision petitioners are acceptable one. In the above circumstances, this Court is of the view that the impugned orders of the Executing Court warrants interference and therefore, these Civil Revision Petitions are to be allowed, subject to the payment of cost.

7. In the result,

(a) The Civil Revision Petition in C.R.P(NPD)(MD)No.1920 of 2018 is allowed by setting aside the fair and decreetal order dated



C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

07.07.2018 passed in E.A.No.217 of 2017 in E.A.No.120 of 2016 in E.A.No.30 of 2014 in E.P.No.46 of 2012 in O.S.No.225 of 2012 on the file of the Sub Court, Thoothukudi on condition that the petitioners shall pay a sum of Rs.3,000/- (Rupees Three Thousand Only) to the credit of the District Siddha Medical Officer CCRI PKM, A/C.No.10767823177, IFSC CODE : SBIN0000898, MICR CODE : 625002601, State Bank of Indida, Periyakulam for the welfare of the Siddha Clinic attached to this Court within a period of two weeks from the date of receipt of a copy of this order, failing which, the petition shall stand automatically dismissed without further reference to this Court. Consequently, connected Miscellaneous Petition is closed.

(b) The Civil Revision Petition in C.R.P(NPD)(MD)No.1921 of 2018 is allowed by setting aside the fair and decreetal order dated 07.07.2018 passed in E.A.No.218 of 2017 in E.A.No.119 of 2016 in E.A.No.29 of 2014 in E.P.No.45 of 2012 in O.S.No.226 of 2012 on the file of the Sub Court, Thoothukudi on condition that the petitioners shall pay a sum of Rs.3,000/- (Rupees Three Thousand Only) to the credit of the District Siddha Medical Officer CCRI PKM, A/C.No.10767823177, IFSC CODE : SBIN0000898, MICR CODE : 625002601, State Bank of Indida, Periyakulam for the welfare of the Siddha Clinic attached to this



C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

Court within a period of two weeks from the date of receipt of a copy of this order, failing which, the petition shall stand automatically dismissed without further reference to this Court. Consequently, connected Miscellaneous Petition is closed.

28.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsd

To

- 1.The Sub Court,
Thoothukudi.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018

P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(NPD)(MD).Nos.1920 and 1921 of 2018
and
C.M.P(MD)Nos.8316 and 8317 of 2018

28.07.2023