



CMA(MD).No.736 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.06.2023

PRONOUNCED ON : 15.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.736 of 2018
and CMP(MD).No.8323 of 2018

N.Palanisamy

...Appellant

VS.

1.M.Madasamy

2.Lakshmi

3.Krishnamoorthy

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 104 of C.P.C r/w Order 21 Rule 58 of C.P.C, to set aside the order and decreetal order dated 24.04.2018 in E.A.No.77 of 2016 in E.P.No.9 of 2015 in O.S.No.146 of 2010 on the file of the Principal District Judge, Tirunelveli and allow this civil miscellaneous appeal as prayed for.

For Appellant	: Mrs.AL.Ganthimathi Senior Counsel For Mr.C.Mahadevan
For R1 & R2	: D.Nallathambi
For R3	: No appearance



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JUDGMENT

The present appeal has been filed by the decree holder in O.S.No. 146 of 2010 challenging the order under which a claim under Order 21 Rule 58 of Civil Procedure Code was allowed by the Execution Court.

2.The appellant herein as plaintiff had filed O.S.No.146 of 2010 before the Principal District Court, Tirunelveli for the relief of recovery of money of Rs.15,00,000/- based upon dishonour of a cheque. In the said suit, an order of attachment before judgement of the property in dispute was passed on 14.12.2010 and made absolute on 19.04.2011. The suit was decreed on 27.03.2004. The plaintiff had filed E.P.No.9 of 2015 to bring 10 items of property for sale. Out of 10 items, the first item in the schedule of execution proceedings is the property in dispute.

3.Pending execution proceedings, respondents 1 and 2 herein who are third parties to the suit had filed E.A.No.77 of 2016 under Order 21 Rule 58 C.P.C to declare that the said property belongs to them and for rasing the order of attachment dated 07.02.2011.

4.The said application was resisted by the appellant herein by contending that after having full knowledge about the order of attachment, the third parties have purchased the property and they are not



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bonafide purchasers. However, the Executing Court had allowed the said application. Challenging the same, the present appeal has been filed by the decree holder/plaintiff.

5.The contentions of the learned Senior Counsel appearing for the appellant are as follows:

(i).The purchasers are residing nearby plaintiff's house and they very well know about the cheque dishonour cases pending before the Magistrate Court and also the steps taken by the plaintiff to recover the said amount. In fact, the order of attachment obtained by the plaintiff was also informed to the claim petitioners.

(ii).Having full knowledge about the encumbrance and the Court order of attachment, they have purchased the property and they are not bonafide purchasers.

(iii).The attachment before judgement order passed by the trial Court has been duly registered in the encumbrance certificate and therefore, the claim petitioners cannot contend that they were not aware of the order of attachment .

(iv).The value of the property is more than Rs.10 lakhs and in order to defeat the rights of the plaintiff, a sale deed has been executed



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by the defendant in favour of the claim petitioners for a paltry sum of Rs.4,85,000/-. The said documents are executed and registered in a fraudulent manner.

(v).The learned Senior Counsel had further contended that the transaction is clearly hit by the provisions of Section 52 of the Transfer of Property Act and therefore, the sale deed dated 16.12.2010 in favour of the claim petitioners may be declared as fraudulent, unlawful and invalid.

(vi).The learned Senior Counsel had relied upon Order 21 Rule 54(3) of C.P.C. to contend that the order of attachment will take effect from the date of order and not from the date of knowledge of the claim petitioners. The claim petitioners were very well aware of the order of attachment being adjacent owner of the plaintiff and therefore, in view of the said provisions, the claim petitioners cannot contend that they came to know about the order of attachment only when it was entered into in the encumbrance certificate.

(vii).The learned Senior Counsel had relied upon the judgment of our High Court reported in **1997 (II) CTC 371 (Vengalaveeran Vs. Rajendran and 4 others)** to contend that the claim petitioners having



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purchased the property with full knowledge about the order of attachment and the sale is not supported by any consideration, the claim petition is not maintainable.

(viii).The learned Senior Counsel had further relief upon the judgement of our High Court reported in **2000 (II) CTC 13 (D.V.Raghavan Vs. A.J.Suresh Kumar and another)** to impress upon the Court to the effect the attachment must be deemed to have come into effect on the date of the order and not on the date when it came to the knowledge of the claim petitioners. Therefore, according to the learned Senior Counsel appearing for the appellant, the order of attachment before judgement has been passed on 14.12.2010 and the claim petitioners had purchased the property only on 16.12.2010, it is clearly a void transaction and therefore, the trial Court was not right in allowing the claim petition declaring title of the respondents 1 and 2 herein. Hence, she prayed for allowing the appeal and to dismiss the claim petition filed by the respondents 1 and 2 herein.

6.The contentions of the learned counsel appearing for the respondents are as follows:

(i).Though the attachment before judgement order was passed on



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14.12.2010, the same was not communicated to the Jurisdictional Registrar and it was recorded in the encumbrance certificate only on 03.03.2011. However, the claim petitioners have purchased the property on 16.12.2010 after verifying the encumbrance certificate.

(ii).The defendant in the suit having received the sale consideration had redeemed mortgage from the State Bank of India, Kovilpatti Branch and he had handed over the original documents to the claim petitioners.

(iii).The claim petitioners have mutated the patta and property tax receipts in their names and they are bonafide purchasers for valuable consideration.

(iv).The claim petitioners were not aware of the pendency of O.S.No.146 of 2010 or the order or attachment passed on 14.12.2010.

(v).When they have verified encumbrance certificate before purchasing the property, it did not reflect the attachment before judgement said to have been passed by the Civil Court.

(vi).The learned counsel had relied upon Order 38 Rule 11-B of C.P.C and Order 21 Rule 58-A of C.P.C to contend that the order of attachment should be communicated to the Jurisdictional Registrar. In



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case, if it is not communicated and recorded, the purchasers should only be considered to be the bonafide purchasers.

(vii). The learned counsel had further relied upon the judgement of our High Court reported in **2000 (II) CTC 524 (Sri Krishna Chit Funds (Sattur Private Limited), Sattur rep. through its Managing Director, Tmt.R.Umayal Vs. R.S.Pillai and another)** to contend that in order to enforce an order of attachment, all the conditions and procedures have to be fully complied with. In case of failure, the order of attachment cannot be sustained.

(viii). The learned counsel had also relied upon another judgement of our High Court reported in **2012 (I) CTC 407 (Sri Humbi Hema Gooda and others Vs. Tamil Nadu State Transport Corporation (CBE) Ltd., Coimbatore and others)** to contend that the communication of order of attachment to the Registering Office is mandatory and if the same is not followed, the order of attachment cannot be sustained. He had also relied upon the judgement of our High Court in **C.M.S.A.No.7 of 2004 (Vellapandi (died) & others Vs. K.S.Maheshwari & another)** to impress upon the Court that unless mandatory provision of communicating the order of attachment to the Registering Officer is



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followed, the order of attachment has no force and it is a void order. The learned counsel further relied upon another judgment reported *in 2019 (6) CTC 55 (Nataraja Naidu (died) and others Vs. Soundararajan and others)* to contend that the alienation made by the defendant would be saved if the conditions under Order 38 Rule 11-B of C.P.C were not complied with. Hence, he prayed for sustaining the order passed by the Executing Court.

7.I have considered the submissions made on either side and perused the materials available on record.

8.The plaintiff had filed a suit for recovery of money on 13.12.2010 and an order of attachment before judgement has been passed on 14.12.2010. The claim petitioners have purchased one of the properties which are subject matter of attachment by way of registered sale deed dated 16.12.2010. These facts are not in dispute.

9.According to the learned Senior Counsel appearing for the appellant, the order of attachment was duly communicated to the concerned Sub-Registrar and it has also been recorded in the encumbrance certificate. However, the claim petitioners have contended that they have verified the encumbrance before purchasing the property



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and there was no order of attachment reflected in the said encumbrance certificate. The claim petitioners in Paragraph No.4 of the claim petition have specifically contended that the order of attachment was registered in the encumbrance certificate only on 03.03.2011. This fact has not been disputed in the counter filed by the decree holder. The claim petitioners have filed the encumbrance certificate dated 13.12.2010 which is marked as Exhibit P11. This certificate has been obtained one day prior to the order of attachment before judgement and the claim petitioners have purchased the property on 16.12.2010 relying upon Exhibit P11 encumbrance certificate.

10. Though the decree holder has contended that the order of attachment before judgement has been registered before the Jurisdictional Registrar, they have not chosen to file any document on their side to establish that the attachment order was registered before the Jurisdictional Registrar. In fact, the averments of the claim petitioners that the attachment order was registered only on 03.03.2011 was not even disputed in the counter. Therefore, it is clear that though the attachment before judgement order was passed on 14.12.2010, it was registered before the Jurisdictional Registrar only on 03.03.2011, six months after



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the sale deed in favour of the claim petitioners.

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11. Now let us consider the legal issues raised by the learned Senior Counsel to the effect that the order of attachment would take effect from the date of order and not from the date of knowledge of the purchaser.

12. Order 38 Rule 11-B of C.P.C (Madras High Court Amendment) is extracted as follows:

1. In order 38, after R.11-A, insert the following rule as rule 11-B

“11-B. Order of attachment to be communicated to the Registering Officer-

Any order of attachment passed under rule 5 or 6 of this order raising the attachment passed under rule 9 of this order shall be communicated to the Registering Officer within the limits of whose jurisdiction the whole or any part of the immovable property comprised in such order is situate”

13. Order 21 Rule 58(A) of C.P.C (Madras High Court Amendment) is extracted as follows:

In Order 21, after 58, insert the following as rule 58-A:-

“58-A. Order of attachment to be communicated to the Registering Officer- Any order of attachment passed under Rule 54 of this order raising the attachment by removal, determination or release passed under Rule 55, 57 or 58 of this order, shall be communicated to the Registering Officer within local limits of



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whose jurisdiction the whole or any part of the immovable property comprised in such order is situated. “

14.A perusal of Order 38 Rule 11-B and Order 21 Rule 58-A of C.P.C will disclose that it is mandatory on the part of the concerned Court to communicate the order of attachment or raising the order of attachment to the Registering Officer within the limits of whose jurisdiction the whole or any of the property is situated. The said provisions have been interpreted by this Court in the following judgements.

(i). ***2000 (II) CTC 524 (Sri Krishna Chit Funds (Sattur Private Limited), Sattur rep. through its Managing Director, Tmt.R.Umayal Vs. R.S.Pillai and another)***, in Paragraph No.20 this Court has held as follows:

“20... All the above decisions would show that order of attachment made either prior to the judgement or after the judgement is to be communicated to the judgement debtor and the Court has to fully comply with the conditions prescribed in the rules. Though there is no direct decision with regard to Madras amendment Order 21, Rule 58-A, and Order 38, Rule 11-B C.P.C, it is clear that in order to enforce an order of attachment, it is clear that all the conditions, procedure are to be



fully complied with failing which, the order of attachment cannot be sustained”

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(ii).2012 (I) CTC 407 (Sri Humbi Hema Gooda and others Vs. Tamil Nadu State Transport Corporation (CBE) Ltd., Coimbatore and others) this Court in Paragraph Nos.12 and 13 has held as follows:

“12.It is clear from the said provision that the communication of the order of attachment to the registering office is mandatory. If the mandatory provision has not been followed, then the order of attachment cannot be sustained. In this regard, a reference could be placed in the judgement relied on by the learned counsel for the appellant reported in Sri Krishna Chit Funds (Sattur) Pvt, Ltd., Vs. R.S.Pillai, 2000 (2) CTC 524.

13.The principles enunciated in the said decision would show that communicating the order of attachment to the concerned Registering Officer is mandatory under Order 38 Rule 11-B and in the absence of communication, the order of attachment has no force. Under these circumstances, I am of the opinion that since the order of attachment itself is void, the submission made by the learned counsel for the first respondent relying upon Section 64, cannot be countenanced.”



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15 A co-joint reading of the above said judgements will clearly disclose that unless the order of attachment passed by the competent civil Court is communicated to the Jurisdictional Registrar and it is entered in the encumbrance certificate, the same is not enforceable and it is a void order. Consequently, Section 64 of C.P.C cannot be invoked to declare the said private alienation as a void transaction.

16.The learned Senior Counsel had relied upon two judgments reported in **1997 (II) CTC 371 (Vengalaveeran Vs. Rajendran and 4 others)** and **2000 (II) CTC 13 (D.V.Raghavan Vs. A.J.Suresh Kumar and another)** in which Order 21 Rule 54(3) has been interpreted. The said sub-rule has been introduced along with the sub-rule 2 by way of Madras High Court Amendment which is extracted as follows:

“Order 21 Rule 54(3) of C.P.C: the order of attachment shall be deemed to have been made as against the transferees without consideration from the judgement-debtor from the date of the order of attachment and as against all other persons from the date on which they respectively had knowledge of the order of attachment, or the date on which the order was duly proclaimed under Sub-rule(2) whichever is earlier”



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17.A perusal of the above said sub-rule will indicate that the order of attachment shall be deemed to take effect as against the transferees without consideration from the date of order of attachment. However, as against all other persons, from the date on which they get knowledge about the order of attachment or the date on which the order was duly proclaimed under sub-rule 2. Therefore, it is clear that the order of attachment will take effect from the date of order only as against the purchasers without consideration. In the present case, even as per the contentions of the decree holder, the claim petitioners have purchased the property for a lesser consideration in order to defraud him. Therefore, it is not a case of transfer without consideration. Even as per Order 21 Rule 54(3), the order of attachment shall take effect as against a person who had purchased the property for consideration only from the date of knowledge of the order of attachment. In the present case, admittedly, the order of attachment has been entered in the encumbrance certificate only on 03.03.2011 which is 6 months after execution of sale deed in favour of the claim petitioners. Therefore, the order of attachment is said to have been brought to the knowledge of the claim petitioners only on 03.03.2011 and not on the date of sale deed namely



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16.12.2010. The plaintiff though had obtained an order of attachment before judgement, had not taken any steps to communicate the same to the Jurisdictional Registrar or to record the same in the encumbrance certificate. Therefore, he cannot blame the claim petitioners for purchasing the property on 16.12.2010.

18. Though the decree holder has contended that the claim petitioners were aware of the order of attachment, no document has been produced to the said effect. The decree holder was also not successful in extracting any admission from the claim petitioners with regard to their knowledge about the order of attachment on the date of sale deed.

19. The claim petitioners have filed the original documents that were obtained from the State Bank of India and they have marked it as Exhibit P4. The patta and house tax receipts have also been transferred in the name of the claim petitioners immediately after purchase. The claim petitioners have applied for patta 3 days after their purchase under Exhibit P11. Therefore, this Court finds that the claim petitioners are bonafide purchasers for valuable consideration without having knowledge about the order of attachment passed by the trial Court.



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20. In view of the above said deliberations, this Court does not find any illegality or infirmity in the order passed by the trial Court and this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2023

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

1. The Principal District Judge,
Tirunelveli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
C.M.A(MD)No.736 of 2018
and CMP(MD).No.8323 of 2018

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