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CRP.No.1535 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 11.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.1535 of 2024 &
CMP.No.8253 of 2024

M/s. Sri Vijayalakshmi Trader,
represented by its Partner,
S.Alamelu Mangai Santhi,
No.15/31, Krishappa Street,
Chintadripet, Chennai 600 002.

. . . Petitioner

Versus

M/s.Sri Om Sakthi Agencies,
represented by its Managing Partner
Mr.V.Arumugam,
No.59/60, Anna Salai,
Chennai 600 002.

. . . Respondent

PRAYER : Petition filed under Section 115 of Civil Procedure Code to set aside the order dated 08.02.2024 passed in E.P.No.527 of 2023 in O.S.No.445o of 2016 on the file of XXV Assistant City Civil Judge, Chennai.

For petitioner : Mr.D. Ajith Kumar

For Respondent : Mr.A.P.Loganathan



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ORDER

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Challenging the impugned order attaching the property of the Judgment Debtor I, in respect of 1/3 share, the present Civil Revision has been filed.

2. Originally, a suit for recovery of money along with interest has been filed by the respondent herein against the Revision Petitioner.

3. The suit has been decreed for a sum of Rs.1,65,550/- along with interest at the rate of 6% from the date of petition till the date of realisation. Pursuant to which, Execution Petition in E.P.No.527 of 2023 has been filed for recovery of decreed amount of Rs.1,65,550/- along with interest and other charges, totalling to Rs.2,48,402/-. In the said E.P., by the ordered impugned, the property having 1/3rd undivided share of the Revision Petitioner / Judgment Debtor is ordered to be attached by bringing it to sale through public auction after determining its market value.

4. It is relevant to note that there is no Privity of Contract between the Revision Petitioner/Judgment Debtor and Respondent/Decree Holder. The suit



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has been filed for recovery of money owed by the husband of the Revision Petitioner/Judgment Debtor. Therefore, any Execution Petition can be proceeded only in respect of the property left by the Revision Petitioner/Judgment Debtor in the hands of the legal representatives, whereas, in the present case, it is stated that it is recorded by the trial court that the property ordered to be attached by the execution court has already been transferred in favour of the legal representatives of the Revision Petitioner/Judgment Debtor as early as on 02.11.2018. Therefore, as on date of the decree, the Judgment Debtor, did not have any right in the property, since, the property ordered to be attached in the EP proceedings has already been transferred in favour of the legal heirs of the Revision Petitioner/Judgment Debtor.

5. However, the Executive Court, applying the principle of *Doctrine of lis pendens*, under section 52 of Transfer of Property Act, has still ordered attachment. It is relevant to note that the applicability of section 52 will arise only in respect of the immovable property. The suit must relate to any right over the immovable property, whereas, the present suit is filed only for recovery of money, in which, section 52 cannot be made applicable. However, the applicable



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section is section 53 of the Transfer of Property Act which deals with the fraudulent transfer of immovable property made with an intention to defeat the creditors. Hence, the Respondent/Decree holder has to file a suit under section 53 of the Transfer of Property Act. Even such transfer is only voidable, should be avoided within time. Considering the above aspect, the impugned order stands set aside.

6. In such a view of the matter, any attachment to the effect in this regard in the encumbrance certificate relating to the property ordered to be attached by the court below, shall be removed by producing a copy of this order.

7. At this juncture, the learned counsel for Revision Petitioner fairly submitted that the Revision Petitioner will pay a sum of Rs.1,10,000/- in full quit within a period of three months. Since, Rs.1,25,000/- was already deposited, it is agreed by respondent side counsel before this court, the remaining amount of Rs.1,10,000/- in full quit would be paid within a period of three months from the date of receipt of a copy of this order, in the event of failure to pay the abovesaid amount as agreed before this Court, the respondent is at liberty to file a fresh



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Execution Petition for appropriate relief.

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8. The Civil Revision Petition is allowed on the above terms. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

msr

To

The XXV Assistant City Civil Judge, Chennai



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N. SATHISH KUMAR, J.
msr

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