



CRP. PD.No.1457 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.11.2024

Pronounced on:06.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD. No.1457 of 2019

and

CMP. No.9471 & 9474 of 2019

Ozone Homes Private Limited,
Rep. by its Authorized Signatory K.Krishnan,
No.63, G.N.Chetty Road,
T.Nagar, Chennai 600 017.

... Petitioner

Vs

1.Mr.P.Krishna Gandhi,
S/o.K.Ponnusamy

2.Mr.T.A.S.Jawahar Ayya @
C.Jawahar Anand

... Respondents

Prayer: The Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the order dated 26.02.2019 passed in I.A No.12056 of 2018 in O.S. No.5046 of 2018 on the file of the XVII Additional Judge, City Civil Court, Chennai.

For Petitioner

: Mr.R.Venkatraman for
M/s.TATVA Legal

For Respondents

: Mr.D.Kanagasundaram for R1
R2 -Dismissed



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ORDER

Aggrieved by an order of attachment passed under Order 37 read with Section 151 of the Code of Civil Procedure, 1908 (CPC), the proposed defendant, the developer of the property is before this Court, by way of the present Revision.

2. I have heard Mr.R.Venkatraman for M/s.TATVA Legal, learned counsel for the revision petitioner and Mr.D.Kanagasundaram, learned counsel for the first respondent.

3. The brief facts of the case that has led to the present revision petition are as follows:

The first respondent herein as plaintiff filed a suit in O.S. No.5046 of 2018, against the second respondent in this revision, for recovery of a sum of Rs.23,00,000/-, together with interest and costs. Along with the suit, the plaintiff also took out an I.A. No.12056 of 2018 to direct the second respondent, that is, the defendant in the suit to furnish security for



the suit claim of Rs.23,00,000/-, failing which, sought for attachment of the property belonging to the second respondent. After enquiry, the said Interlocutory Application came to be allowed, initially directing the defendant to furnish security for the suit claim by an order dated 27.09.2018 and since the defendant, that is the second respondent herein, failed to furnish any security as directed by the Court, a consequential order of attachment of the property was ordered by the Trial Court on 26.02.2019. Aggrieved by the said order, the revision petitioner has come up by way of the present Revision Petition.

4. According to Mr.R.Venkatraman, learned counsel for the revision petitioner, the order of attachment dated 26.02.2019, was not communicated to the Sub Registrar concerned and therefore, it is a clear violation of the mandate under Order 38 Rule 11(b) CPC and on this limited ground itself, he would contend that the attachment would have to be raised.

5. Further, Mr.R.Venkatraman would submit that no doubt the property was belonging to the second respondent, but the revision



petitioner had entered into a Joint Development Agreement with the second respondent as early as on 19.11.2010, to develop the property, in and by which, the second respondent would only be entitled to a share in the profits and he was not entitled to any constructed area. The learned counsel would further submit that the suit has been filed long after the Joint Development Agreement and much water has flown in the interregnum period and therefore, the order of attachment has to be raised, considering the subsequent developments viz., sale of several flats to innocent third party purchasers.

6. He further contended that pending the revision, all the flats have been sold, except for two flats, over which there is a subsisting attachment order at the hands of the Income Tax Department. The learned counsel would also furnish a copy of a statement showing details of all the flats sold and two flats which have been attached for income tax dues of the second respondent. The learned counsel for the revision petitioner would therefore pray for the Civil Revision Petition being allowed and the attachment order being raised.



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7. Per contra, Mr.D.Kanagasundaram, learned counsel for the first respondent would submit that the attachment order was passed on 26.02.2019 and immediately, the revision petitioner has filed an impleading Application before the Trial Court on 25.03.2019 and soon thereafter, on 08.04.2019 filed the above Civil Revision Petition where an interim order was also granted. Therefore, according to the learned counsel for the first respondent, there was effectively no time available to the first respondent /plaintiff to communicate the order of attachment to the Sub Registrar. Therefore, he would submit that the violation or non compliance of mandate of Order 38 Rule 11 of CPC, cannot be pressed into service, in the facts of present case.

8. With regard to the sale of flats and the order of attachment, learned counsel for the first respondent would submit the sale of flats to third parties would not bind the plaintiff who is armed with an order of attachment before judgment from a competent Court and according to the learned counsel for the first respondent, the plaintiff is entitled to a charge over the suit property. He would therefore pray for dismissal of the revision petition.



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9. I have carefully considered the submissions advanced on either side. I have also gone through the records and also statements filed before this Court regarding the sale and attachment of the various flats constructed in the suit property.

10. Admittedly, the suit property belonged to the second respondent who has entered into a Joint Development Agreement with the revision petitioner on 19.11.2010. The Joint Development Agreement is not the usual agreement entered into between a property owner and a developer. Under the present joint development agreement, the parties had agreed to only share the sale proceeds in 60%, 40% ratio with the second respondent being entitled to 60% and revision petitioner being entitled to 40%. The revision petitioner and the second respondent agreed for sale of all the flats to be constructed in the suit property.

11. I find that the present suit for recovery of money as against the second respondent has been filed only in September 2018, 8 years after the Joint Development Agreement. In fact, even in the plaint, I find that the plaintiff has pleaded knowledge of the Joint Venture Agreement



entered into between the revision petitioner and the second respondent herein. Even though an order of attachment has been passed in I.A. No.12056 of 2018, the second respondent is denying the liability of the first respondent/ plaintiff. Therefore, this is a matter for trial and the liability of the second respondent can be determined only on the parties leading evidence at trial.

12. In the meantime, that is, pending disposal of the suit, the interest of the plaintiff needs to be protected. No doubt, the plaintiff has obtained an order of attachment before judgment on 26.02.2019, consequent to failure of the second respondent to comply with the order directing him to furnish security. It is an admitted fact that several of the flats constructed in the suit property have been sold, even prior to the filing of the suit. Few of the flats have also been sold subsequent to the order of attachment. However, since the order of attachment has not been communicated to the Sub Registrar concerned, the purchasers who have proceeded to purchase their respective flats, post the order of attachment, are innocent third party buyers and their interest cannot be put to peril, especially when they are not parties to the suit and



admittedly, the transaction is a simple money transaction between the first and second respondents.

13. At the same time, having obtained an order of attachment, the plaintiff's interest also cannot be left in the lurch. It is seen that out of 32 flats, 30 flats are sold to third party purchasers and two flats remain unsold viz., Unit Nos. 201 & 601, which have a built up area of about approximately 3640 sq.ft each, together with undivided share of 1029 sq.ft, each. The order of attachment in favour of the Income Tax Department as seen from the communication dated 21.09.2017, evidences the fact that the second respondent is due and payable a sum of Rs.7,14,31,849/- to the Income Tax Department and in respect of the said amount due, Unit Nos.201 and 601 have been attached. The value of these two apartments is approximately about Rs.7,00,00,000/- each, and considering that the suit claim itself is only Rs.23,00,000/- together with future interest, it would be sufficient to attach these two apartments, ofcourse, subject to the first charge of the Income Tax Department. In this manner, the interest of the first respondent/plaintiff would be adequately protected.



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14. In view of the above, I deem it fit to pass the following order:

The order of attachment in I.A. No.12056 of 2018, is modified and restricted to the following property,

<i>Residential</i>	<i>Sealable Area</i>	<i>Proportionate UDS</i>
Flat No.201, 2 nd Floor The Gardenia	3640 Sq.Ft	1029 Sq. Feet of undivided share of land out of 13 Ground and 1998 Sq.Feet comprised in Survey No.140/2(P) and 141(P), then TS. No.4/1, now TS No.4/17, Block No.9C, Naduvakkarai Village, bearing Plot No.B, 4 th Avenue, Shanthi Colony, Anna Nagar, Chennai – 600 040 out of 13 Grounds and 1998 Sq.Feet.
Flat No.601, 6 th Floor, The Gardenia	3640 Sq.Feet	1029 Sq.Feet of undivided share of land out of 13 Ground and 1998 Sq. Feet, comprised in Survey No.140/2(P) and 141(P), then TS. No.4/1, now TS No.4/17 Block No.9C, Naduvakkarai Village, bearing Plot No.B, 4 th Avenue, Shanthi Colony, Anna Nagar, Chennai – 600 040 out of 13 Grounds and 1998 Sq.Ft.

the above being subject to the first charge of the Income Tax Department. In other words, the first respondent/plaintiff shall have a second charge over the above mentioned two apartments. It is also made clear that the first respondent has to follow the mandate of Order XXXVIII, Rule 11 (b) of CPC and communicate this order of attachment to the Sub Registrar, Anna Nagar, for the said attachment to take full



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effect.

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15. With the above direction, this Civil Revision Petition is *partly*
allowed. Consequently, connected Miscellaneous Petitions are closed.

No costs.

06.12.2024

Index:Yes/No

Speaking order/Non-speaking order

rkp

To

1. The XVII Additional Judge, City Civil Court,
Chennai.

2.The Section Officer, VR Section,
Madras High Court, Chennai.



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P.B.BALAJI, J.

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**Pre-Delivery Order in
CRP. PD. No.1457 of 2019
and
CMP. No.9471 & 9474 of 2019**

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P.B.BALAJI, J.

Subsequent to the order being pronounced today i.e., 06.12.2024, the learned counsel for the first respondent/plaintiff made a request seeking issuance of direction to the Trial Court to dispose of the suit expeditiously.

2. Considering the suit is only for recovery of money and has been pending from 2019, the Trial Court viz., XVII Additional Judge, City Civil Court, Chennai shall dispose of the suit in O.S. No.5046 of 2018 on or before 30.04.2025.

06.12.2024

rkp

Note: Registry is directed to issue a fresh copy of the order after incorporating this direction.