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C.R.P.Nos.1493, 1494 and 1498 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

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THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.1493, 1494 and 1498 of 2023

R.Ravinder Kumar ... Petitioner in C.R.P.No.1493 of 2023

R.Ravinder Kumar (HUF)
represented by its Manager and
Karta R.Ravinder Kumar,
s/o Late G.Rishabchand,
No.30, Govindu Street
T.Nagar, Chennai 600 017. ... Petitioner in C.R.P.No.1494 of 2023

R.Nihhaal ... Petitioner in C.R.P.No.1498 of 2023

-Vs-

N.Sonai Muthu ... Respondent in all the C.R.Ps.

Prayer in C.R.P.No.1493 of 2023 : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decree dated 16.09.2022 passed in EP No.2856 of 2016 in O.S.No.2649 of 2014 on the file of the IX Assistant City Civil Court, Chennai.

Prayer in C.R.P.No.1494 of 2023 : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decree dated 16.09.2022 passed in EP No.2823 of 2016 in O.S.No.2650 of 2014 on the file of the IX Assistant City Civil Court, Chennai.

Prayer in C.R.P.No.1493 of 2023 : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decree dated 16.09.2022 passed in EP



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No.2843 of 2016 in O.S.No.2648 of 2014 on the file of the IX Assistant City Civil Court, Chennai.

In All C.R.Ps

For Petitioners : Mr.M.Nandakumar
for M/s.Eswar, Kumar and Rao

For Respondent : Mr.S.Ruben Prabu

COMMON ORDER

These Civil Revision Petitions are filed by the unfortunate decree holders. It is not uncommon for a judgment debtor in a money suit to bring on revision to this Court. This is a unique case, where the decree holders are on revision as against an equally unfortunate order passed by the learned executing Judge.

2. The Civil Revision Petitioner in each of the revisions has obtained a decree for recovery of money. In C.R.P.No.1493 of 2023, the decree holder has obtained a decree for recovery of Rs.7,12,245/- together with interest on the basis of the judgment and decree in O.S.No.2649 of 2014 dated 11.03.2015. In C.R.P.No.1494 of 2023, the decree holder has obtained a decree for recovery of Rs.7,23,125/- together with interest on the basis of the judgment and decree in O.S.No.2650 of 2014 dated 11.03.2015. Similarly, the revision petitioner in C.R.P.No.1498 of 2023 has obtained a decree for recovery of Rs.7,33,826/- together with interest on the basis of the judgment and decree in O.S.No.2648 of 2014 dated 11.03.2015.

3. In all the three suit proceedings, the respective plaintiffs had attached the



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property belonging to the judgment debtor and one Selvi situated at Nos.58 and 59, Sri Balaji Nagar, Padikuppam, Chennai. The said attachment also seems to have been registered in terms of the Civil Procedure Code with the respective Registrars. While proceeding with the execution, the decree holders noticed that there are several previous encumbrances in and over the property situated at Balaji Nagar, Padikuppam and therefore they wanted to attach the property at Flat No.469/17, 2nd Floor, Block 1D, Survey No.403, Naduvankarai Village, Egmore-Nungambakkam Taluk, Chennai. The three applications for sale and attachment were received as E.P.Nos.2823, 2856 and 2843 of 2016.

4. The learned trial Judge, after receipt of the counter from the respondent, dismissed the execution petitions on the ground that the decree holders must proceed only against the properties which he had attached pending the suit and not as against any other properties belonging to the judgment debtor and consequently dismissed the petitions. This very fantastic and curious order is put under revision before me.

5. Heard Mr.M.Nandakumar for the revision petitioners and Mr.S.Ruben Prabu for the respondent.

6. It is a settled position of law that a decree holder can proceed against any



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property of the judgment debtor, which is available for the purpose of attachment and sale and no law, certainly the Civil Procedure Code, does not contemplate a situation that the decree holder must proceed only against the property that has been attached by him during the course of the suit and bring it for sale and only if it is found insufficient, then proceed against other properties. The choice of execution is entirely that of the decree holders. It is the duty of the judgment debtor to honour the decree and if he fails to do so, the decree holder is constrained to approach the Court for the purpose of realisation of his money. Unless and until the Civil Procedure Code imposes a bar, it is not open to the executing Court to pass an order as it has been done in the present cases that only after the execution proceedings are concluded as against the attached property, it can proceed against the unattached properties.

7. The purpose of attachment is to bring the property under the control of the Court. The purpose of bringing the property under such control is because, if not, on decree holder being successful in the suit, then an unscrupulous judgment debtor would be in a position to alienate the property and convert the decree that has been granted by the Court into a paper decree. It is only for this purpose that the provisions of Section 64 of the Civil Procedure Code read with Order XXXVIII contemplate the position where, if the decree holder feels that the judgment debtor will keep the property away from execution, a prohibitory order restraining the judgment debtor from alienating the property is passed. This does not certainly



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take away the right of a decree holder to proceed against the properties from which he can easily realise the amount due. The point on which the petitions have been dismissed that the decree holder must necessarily proceed against the attached property and thereafter only against the other properties does not appeal to me, nor it is supported by any logic or law.

8. In the light of the above discussion, all these Civil Revision petitions are allowed and E.P.Nos.2823, 2856 and 2843 of 2016 shall stand restored on to the file of the learned IX Assistant Judge, City Civil Court, Chennai to proceed further with execution of all expediency considering the fact that the judgment debtors have obtained the decrees as early as in 2015 and are still knocking on the doors of the Court. No costs.

15.07.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The IX Assistant Judge
City Civil Court, Chennai.



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V. LAKSHMINARAYANAN, J.

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