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W.A.No.1786 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.07.2024**

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

AND

THE HONOURABLE MR.**JUSTICE R.SAKTHIVEL**

**Writ Appeal No.1786 of 2024**  
**and CMP No.12840 of 2024**

1. N. Periyasamy

2. Nallammal

..Appellants

Vs.

1.The Sub Registrar,  
Registration Department,  
Paramathi, Namakkal District.

2. The Sub Registrar,  
Registration Department,  
Velagoundenpatti, Namakkal District.

3. Gurusamy

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 06.02.2024 in WP No.2494 of 2024 by allowing this Writ Appeal.

For Appellant : Mr.C.Prakasam



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For Respondents : Mr.Stalin Abimanyu  
Special Government Pleader

### **J U D G M E N T**

*(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)*

The appellants presented a document of partition for registration on 16.03.2023. The Sub Registrar, Paramathi refused to register the document on the ground that there was an attachment order made by the Sub Court, Namakkal which was entered in the Encumbrance Certificate in the year 2003.

2. It is the case of the appellants that the suit itself was compromised subsequently and the suit was dismissed for default as early as on 02.03.2007, despite the said decree having been placed before the Sub Registrar, the Sub Registrar has chosen to reject the document on the ground that the attachment is in force. The Writ Petition was dismissed on the premise that since the order of dismissal of the suit was not communicated and the entry in the encumbrance certificate was not removed, the Registrar was justified in issuing a check slip. We are unable to sustain the order of the learned Single Judge. An attachment as is known to law runs with the



land. An attachment over the property does not operate as a bar on sale of the property.

3. In fact order 38 Rule 11- A Rule 2 of the Code of Civil Procedure makes it very clear that an attachment before judgment made in a suit which is dismissed for default will not revive merely because the suit is restored. Further Section 64 of the Code of Civil Procedure which deals with an effect of attachment reads as follows:

***64. Private alienation of property after attachment to be void.*** — (1) *Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.*

(2) *Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or*



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*delivery entered into and registered before the attachment.*

*Explanation.—For the purpose of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.*

A reading of the above provision makes it clear that an alienation of attached property is not completely prohibited. Such alienation is declared to be void only against claims enforceable under the attachment. Therefore, mere fact that an attachment order is passed by a Court does not have the effect of suspending the constitutional right to property assured under Article 300-A of the Constitution of India.

4. On facts we do not see any necessity to go into those questions since enough material has been placed before us to show that the suit itself has been dismissed in the year 2004. Therefore, the non-deletion of the entry in the encumbrance certificate alone would not bring the matter within the scope of Section 22-B(3) of the Registration Act.

5. Hence we are satisfied that the order impugned in the Writ



Petition needs to be set aside. The Writ Appeal is **allowed**, the order of the learned Single Judge as well as the order impugned in the writ petition are set aside. There will be a direction to the Registrar concerned viz. the Sub Registrar, Paramathi, to register the instrument of partition dated 16.03.2023, if it is presented for registration again within a period of 15 days from today. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

6. We find that in the recent past, many Sub-Registrars are refusing to register non-testamentary instruments, dealing with immovable property on the ground that there is an entry relating to an order of attachment passed by a Civil Court even though it is brought to their knowledge that the suit in which the order of attachment was passed has either been disposed of or dismissed. This is primarily due to the failure on the part of the staff of the Courts to communicate orders raising attachments or disposal of the suits. Rule 11 B of Order 38 of the Code of Civil Procedure 1908, as introduced by the Madras High Court specifically provides that orders granting or raising attachment should be communicated to the registering officer within whose jurisdiction the property subject matter of the attachment is situate. Rule 48A of Civil Rules of Practice



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requires the court to collect Batta for communicating both orders of attachment and orders raising attachment together. In many cases orders raising attachment or dismissal of the suit, which results in raising of the attachment are not communicated to the registering officer resulting in the entry relating to the attachment, remaining in the encumbrance certificates, resulting in the Registrars refusing to register instruments citing the existence of the entry relating to attachment only.

7. In order to prevent recurrence of such mistakes in future, we direct the Judicial Officers, manning civil courts, the ensurer that orders, raising attachment or orders dismissing suits in which an order of attachment has been granted are properly communicated to the registering officers without fail.

**(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)**

jv

**03.07.2024**

Index: Yes

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Speaking order

Neutral Citation: Yes

**Note: Issue order copy on 05.07.2024**



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To

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2. The Sub Registrar,  
Registration Department,  
Velagoundenpatti, Namakkal District.



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**and**

**R.SAKTHIVEL, J.**

(jv)

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