



WEB COPY



C.R.P. Nos.3266 and 1769 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP. Nos.3266 and 1769 of 2022
and C.M.P. No.6934 of 2022

M. Srinivasan S/o. Muthusamy

...Petitioner / 3rd party
[common in both C.R.P.s]

Vs.

1. M. Durai S/o. Late Mohana Mudaliar
2. G. Venkatesan S/o. Gopalakrishnan

..... Respondents
[common in both C.R.P.s]

PRAYER in C.R.P. No.3266 of 2022: Civil Revision Petition is filed under

Article 227 of Constitution of India to set aside the fair and decreetal order dated 28.04.2022 made in E.A. No.1 of 2021 in E.P. No.76 of 2019 in O.S. No.30 of 2017 on the file of the learned II Additional District Judge, Vellore @ Ranipet.

PRAYER in C.R.P. No.1769 of 2022: Civil Revision Petition is filed under

Article 227 of Constitution of India to set aside the fair and decreetal order dated 28.04.2022 made in E.A. No.unnumbered of 2022 in E.A. No.1 of 2021 in E.P. No.76 of 2019 in O.S. No.30 of 2017 on the file of the learned II Additional District Judge, Vellore @ Ranipet.

For Petitioner : Mr. G. Jeremiah Gregory John



C.R.P. Nos.3266 and 1769 of 2022

[in both C.R.P.s]

For Respondents : Mr. R. Venkatasubban
for M/s. Sarvabhauman Associates
[for R1]
[in both C.R.P.s]

Mr. K. Mohanamurali [for R2]
[in both C.R.P.s]

COMMON ORDER

The Civil Revision petition has been preferred as against the order passed in E.A. No.1 of 2021 in E.P. No.76 of 2019 in O.S. No.30 of 2017, wherein the 1st respondent herein has filed E.A. No.1 of 2021 for delivery of possession of the property and the same was allowed.

2. The petitioner is the third party to the proceedings and the 2nd respondent herein has borrowed a sum of Rs.3 lakhs from the petitioner on 09.03.2014 and agreed to repay the same @ 12% per annum. Again he borrowed a sum of Rs.3,50,000/- on 06.04.2014 and executed a promissory note to repay the said amount @ 12% p.a.. Thereafter, due to non-payment of the said amount, the petitioner has filed a Suit in O.S. No.83 of 2015 on the file of Sub Court, Arakkonam and obtained a decree dated 01.04.2016. Thereafter, he filed an E.P. No.104 of 2016 for attachment of the schedule mentioned property and the property was also attached on 03.08.2017.

Thereafter, the attached property was brought for sale and the sale action was



C.R.P. Nos.3266 and 1769 of 2022

also held on 23.08.2021 and the sale was confirmed in favour of the petitioner on 26.10.2021. The Sale certificate was issued on 23.04.2022. The 2nd respondent had suppressed the fact that already in respect of the Suit property, there was an agreement between the 1st and the 2nd respondents. Thereafter, the petitioner came to know through encumbrance certificate dated 05.04.2022 that the 2nd respondent had executed a Sale Deed dated 22.04.2021 in favour of the 1st respondent. The respondents collusively and fraudulently entered into sale transaction dated 22.04.2021 in order to defeat the legitimate rights of the petitioner. The respondents collusively created an agreement dated 20.03.2017 and also filed a Suit in O.S. No.30 of 2017 on the file of the II Additional District and Sessions Court, Ranipet for the relief of specific performance of contract and the decree was passed on 23.07.2018. Thereafter, the 1st respondent filed an E.P. No.76 of 2019 and the Suit was decreed dated 24.02.2021. Thereafter, a Sale Deed was executed on 24.02.2021 by the court and thereafter E.A. No.1 of 2021 was filed for delivery of the property and the same was allowed. Now, the petitioner came to know about the delivery through execution proceedings and thereby, he filed this civil revision petition after obtaining permission from this Court to grant leave to file the above civil revision petition and the same was allowed. Therefore, the order passed by the Trial Court delivering the property to the 1st



respondent is liable to be set aside.

WEB COPY

3. The learned counsel appearing for the petitioner would contend that the 2nd respondent borrowed money from the petitioner and due to non-payment, he filed the main Suit in O.S. No.83 of 2015 and thereafter obtained a decree and thereafter the same was executed and thereafter, he purchased the property through Court action held on 23.08.2021 and a Sale Certificate was issued on 23.04.2022 in his favour. Thereafter, he came to know that the 1st and the 2nd respondents had collusively created a Sale Agreement dated 20.03.2017 and hence he filed a Suit in O.S. No.30 of 2017 on the file of the II Additional District and Sessions Court, Ranipet and the same was decreed and thereafter the 1st respondent got sale deed through the Court and now the property was delivered to him through E.A. No.1 of 2021. The above said agreement was created by the respondents collusively in order to defeat the legitimate rights of the petitioner and they got decreed and the property was also delivered. Before sale, the property was attached by the petitioner through Court. Therefore, a Sale Deed was executed in favour of the 1st respondent by the 2nd respondent is not valid. The petitioner is not a party to the said execution proceedings in O.S. No.30 of 2017 in E.P. No.76 of 2019 in E.A. No.1 of 2021. However, by ordering delivery of the property of the 1st



C.R.P. Nos.3266 and 1769 of 2022

respondent, sale deed obtained by the petitioner. Therefore, Court action will be effected through this order. Therefore, the petitioner filed this civil revision petition against the order passed by the Trial Court in E.A. No.1 of 2021 by ordering delivery. While pending execution application in E.A. No.1 of 2021, he filed petition before the executing Court and the same was returned and thereafter, the said petitions were re-presented and the same were not numbered and returned. In the meantime, orders were passed in E.A. No.1 of 2021. Since the property was attached prior to the execution of sale deed in favour of the 1st respondent, the sale is void. But the Trial Court failed to consider the same. By suppressing the same, the respondents obtained the order passed by the executing Court and hence the same is liable to be set aside.

4. The learned counsel appearing for the respondent would contend that the 1st and 2nd respondents entered into an agreement to sell the property on 20.03.2017 and the said agreement was a registered agreement. Due to the failure on the part of the 2nd respondent to execute the Sale deed, the 1st respondent filed a Suit in O.S. No.101 of 2017 for specific performance of contract and the 2nd respondent was set exparte and the Suit was decreed on 23.07.2018. Thereafter, he filed an execution petition in E.P. No.76 of 2019



C.R.P. Nos.3266 and 1769 of 2022

and the sale deed was executed and registered before the Sub-Registrar on 24.02.2021. Thereafter, he filed an E.A. No.1 of 2021 for delivery of possession and the same was also ordered in favour of the petitioner and possession was handed over to him on 23.02.2022. On 12.04.2022, the petition filed by the third party under Order XXI Rule 26 r/w 151 of Code of Civil Procedure and under Order XXI Rule 35 and 91 read with 151 of Code of Civil Procedure was returned and delivery was recorded on 28.04.2022. The date of agreement in favour of the 1st respondent is 20.03.2017. But the adjudication order was passed after the date of agreement and the sale deed was also executed after the sale deed in the name of the 1st respondent. Further after the purchase of the property through Court auction, the petitioner has not taken any steps to take delivery, but he awaited for more than one year. Therefore, the claim is barred by limitation. Therefore, the order passed by the executing Court is in order and the petitioner cannot take delivery of the property in the Suit filed by the 1st respondent. If at all, the petitioner is having any right, he ought to have filed petition for taking delivery of property in the Suit filed by him in O.S. No.83 of 2015 and not through this petition. Therefore, the executing Court has passed a reasoned order and the civil revision petition is liable to be dismissed.



5. In support of his contention, he has relied upon the following judgments:-

(i)Adhinarayana vs. S. Gafoor Sab and others reported in AIR 2004 AP 377

(ii)Atul Anand vs. Nanak Food Industries and others reported in 2006 SCC Online Del 851.

(iii)Patnayakuni Kodandaram vs. Kolati Dhanalakshmi and 2 others reported in Civil Revision Petition No.1678 of 2014.

(iv)Vannarakkal Kallalathil Sreedharan vs. Chandramaath Balakrishnan and another reported in (1990) 3 Supreme Court Cases 291.

(v)Hamda Ammal vs. Avadiappa Pathar and 3 others reported in (1991) 1 Supreme Court Cases 715.

6. This Court heard both sides' and perused the entire records.

7. In this case, the 1st respondent has obtained a decree from the Court through O.S. No.83 of 2015 on the file of Sub Court, Arakkonam and thereafter, filed an execution petition and the property was attached on 03.08.2017 and thereafter, the property was brought for auction in sale dated 23.08.2021 and thereafter, the sale was confirmed on 26.10.2021 and a Sale Certificate was issued on 23.04.2022. The 1st respondent has filed a Suit as against the 2nd respondent for specific performance of contract alleging that there was an agreement between the respondents dated 20.03.2017 and the said Suit was decreed on 23.07.2018 and thereafter, a Sale deed was executed on 24.02.2021. Thereafter, the property was delivered through Court order



C.R.P. Nos.3266 and 1769 of 2022

dated 24.08.2022. The petitioner, being a third party, filed an application before the executing Court and the same was not numbered and returned. In the meantime, delivery order was passed in E.A. No.1 of 2021. Therefore, the petitioner has filed the present civil revision petition by obtaining leave from the Court by challenging the order passed by the executing Court in E.A. No.1 of 2021.

8. According to the petitioner, the property was attached before judgment as early as on 03.08.2017, where sale deed was executed in favour of the 1st respondent on 24.02.2021. Therefore, the sale is void as per Section 64 of Code of Civil Procedure. According to the respondent, the agreement is a registered agreement. The date of agreement was 20.03.2017. But the attachment is after agreement. Therefore, the sale agreement will prevail over the attachment. Further the date of sale in favour of the petitioner is 23.08.2021 and the sale was confirmed on 26.10.2021 and the sale certificate dated 23.04.2022, whereas the sale deed was executed in favour of the 1st respondent on 24.02.2021 i.e., prior to the sale in favour of the petitioner. Now the question would arise as to which sale will prevail over.

9. In this context, the learned counsel appearing for the respondent has



C.R.P. Nos.3266 and 1769 of 2022

relied upon the following judgments:-

1. *Adhinarayana vs. S. Gafoor Sab and others reported in AIR 2004 AP 377.*
2. *Atul Anand vs. Nanak Food Industries and others reported in 2006 SCC Online Del 851.*
3. *Patnayakuni Kodandaram vs. Kolati Dhanalakshmi and 2 others reported in Civil Revision Petition No.1678 of 2014.*
4. *Vannarakkal Kallalathil Sreedharan vs. Chandramaath Balakrishnan and another reported in (1990) 3 Supreme Court Cases 291.*
5. *Hamda Ammal vs. Avadiappa Pathar and 3 others reported in (1991) 1 Supreme Court Cases 715.*

10. On careful perusal of the above judgments, it is seen that in the case in *Hamda Ammal vs. Avadiappa Pathar and 3 others reported in (1991) 1 Supreme Court Cases 715*, the Hon'ble Supreme Court has held that the *sale deeds executed prior to attachment before judgment, can be registered subsequently, will prevail over the attachment before judgment.* This judgment is in respect of the sale deeds executed prior to the attachment.

In the case on hand, the sale deed was not executed prior to the attachment, but only agreement was executed. Therefore, the said judgment will not be applicable to the present facts of the case.



11. As far as the case in *Vannarakkal Kallalathil Sreedharan vs. Chandramaath Balakrishnan and another reported in (1990) 3 Supreme Court Cases 291* is concerned, the Hon'ble Supreme Court has held in *para-9* as follows:-

"9. In our opinion, the view taken by the High Courts of Madras, Bombay, Calcutta and Travancore - Cochin in the aforesaid cases appears to be reasonable and could be accepted as correct. The agreement for sale indeed creates an obligation attached to the ownership of property and since the attaching creditor is entitled to attach only the right, title and interest of the judgment-debtor, the attachment cannot be free from the obligations incurred under the contract for sale. Section 64 CPC no doubt was intended to protect the attaching creditor, but if the subsequent conveyance is in pursuance of an agreement for sale which was before the attachment, the contractual obligation arising therefrom must be allowed to prevail over the rights of the attaching creditor. The rights of the attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of the attached property. The attaching creditor cannot ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the judgment-debtor. We cannot, therefore, agree with the view taken by the Punjab and Haryana High Court in *Mohinder Singh case*".

12. As far as case law in *Adhinarayana vs. S. Gafoor Sab and others reported in AIR 2004 AP 377* is concerned, the Hon'ble High Court of Andhra Pradesh, in Para 25 to 29 held as follows:-

25. *The Madras High Court took the same view in Rebala Venkata Reddi v. Yellappa Chetti, AIR 1917 Madras 4.*

26. *In Diravyam Pillai v. Veeranan Ambalam, (1939) 2 Mad LJ 822 : (AIR 1939 Madras 702) Varadachariar, J as he then was, at page 831 (of Mad LJ): (at p. 706 of AIR) held as follows:*

"The question is not whether any interest has passed under the contract to sell. The attaching decree-holder attaches not the physical property, but only the rights of the judgment-debtor in the property".

27. *This view was followed by Wardsworth, J in Athinarayana v. Subramania, AIR 1942 Mad 67 wherein the learned Judge has held thus:*



C.R.P. Nos.3266 and 1769 of 2022

"Though a contract to sell does not having regard to the terms of Sec. 54 of the Act; create any interest in or charge on the property, it does give rise to an obligation which limits the right of the judgment-debtor and the attachment of the right, title and interest of the judgment-debtor is subject to any such limitation by which the judgment debtor was bound. Therefore, where subsequent to a contract to sell certain property, is attached in execution of a decree, the attachment does not prevail over the pre-existing contract to sell. The right of the judgment-debtor in the property is on the date of the attachment qualified by the obligation incurred by him under the earlier contract to sell and the attaching creditor cannot claim to ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the judgment-debtor.

28. K. Ramaswamy, J while agreeing with the views of the Madras High Court and by expressing that the learned Judge is bound by the ratio laid down by the Madras High Court held that though the agreement of sale does not create any right, title or interest in the property under S. 64 of the Code of Civil Procedure, it creates an interest in the property by operation of second paragraph of S.40 of the Transfer of Property Act, 1882 and this right prevails by operation of Order 38, Rule 10 C.P.C., therefore, the rigour imposed under S.64 does not prevail. The agreement of sale is not thereby void and the attachment does not prevail over the contract for sale.

29. In the case on hand, the agreement of sale was executed on 15.06.1990 and the attachment before judgment was ordered on 05.03.1992. Though the sale-deed executed by the Court on 07.08.1993 was subsequent to the date of attachment, the agreement of sale, which was executed prior to the date of attachment, prevails over the attachment. In the light of the above legal position, I have no hesitation to hold the schedule property cannot be brought to sale. The lower Court rightly concluded grounds to interfere with the order of the lower Court".

On a careful perusal of the above judgments, it is clear that the agreement for sale creates an obligation attached to the ownership of property and since the attaching creditor is entitled to attach only the right, title and interest of the judgment debtor, the attachment cannot be free from the obligations incurred under the contract for sale. Section 64 of Code of Civil Procedure which prohibits private alienation of property after attachment to be



C.R.P. Nos.3266 and 1769 of 2022

void, 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, which include claims for the rateable distribution of assets and 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 delivery entered into and registered before the attachment and Section 64 of Code of Civil Procedure was intended to protect the attaching creditor, but if the subsequent conveyance is in pursuance of an agreement for sale which was before the attachment, the contractual obligation arising therefrom must be allowed to prevail over the rights of the attaching creditor. The rights of the attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of the attached property.

13. In the case on hand also, prior to the attachment, the sale agreement was executed in favour of the 1st respondent. Therefore, the said case laws are squarely applicable to the present facts of the case. Further the property was already sold in favour of the 1st respondent and thereafter the



C.R.P. Nos.3266 and 1769 of 2022

sale deed was examined in favour of the petitioner. Moreover, the petitioner, being the decree holder in O.S. No.83 of 2015 has not taken any steps to take delivery of possession in his favour even after obtaining sale deed through Court in his favour for more than one year, but filed petition in this case, who is not a party to the Suit. As far as the unnumbered petition is concerned, the petitioner had filed a petition before the trial Court and the same was returned as *since the order has been passed in E.A. No.1 of 2021 in E.P. No.76 of 2019 in O.S. No.30 of 2017, this petition is returned.* The petitioner has not filed any application for delivery in the suit filed by him and filed petition in the suit in which he is not a party, that too at the stage of passing orders in the E.A. No.1 of 2021 filed for taking delivery. Therefore, the order passed by the executing Court by delivering the property to the 1st respondent and returning the petition filed by the petitioner are in accordance with law, which does not warrant any interference.

14. In view of the above judgments and as discussed above, this Court is of the opinion that the Civil Revision Petitions have no merits and deserve to be dismissed.

15. In the result, the civil revision petitions are dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.



C.R.P. Nos.3266 and 1769 of 2022

WEB COPY

31.07.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

To

The II Additional District Judge, Vellore @ Ranipet.

P.DHANABAL, J.,

mjs



WEB COPY



C.R.P. Nos.3266 and 1769 of 2022

C.R.P. Nos.3266 and 1769 of 2022

31.07.2024