



C.R.P.No.2768 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2768 of 2024 and
C.M.P.No.14687 & 14689 of 2024

R.Srinivasan

... Petitioner

Vs.

1.T.Palanisami

2.K.A.Gopal

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to allow the Civil Revision Petition by setting aside the Fair and Decreetal Order dated 12.07.2023 passed by the learned District Judge, Nilgiris, Uthagamandalam in E.P.No.8 of 2015 in O.S.No.36 of 2012.

For Petitioner : Mr.B.Hari Krishnan

For R1 : Mr.T.R.Sathiya Mohan



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ORDER

The petitioner who is the third party to the suit in O.S.No.36 of 2012 filed this civil revision petition challenging the impugned order, dated 12.07.2023 in E.P.No.8 of 2015 in O.S.No.36 of 2012 passed by the learned District Judge, Before the District Court of the Nilgiris District, Udhagamandalam.

2.The learned counsel for the petitioner submitted that the 1st respondent is the decree holder who filed E.A.No.2 of 2021 in E.P.No.8 of 2015 stating that the third party filed a claim petition that the Execution Petition schedule property was subjected to mortgage and it was brought to the public auction by the Debt Recovery Tribunal, Coimbatore. Since the Execution Petition schedule property already sold by the Debt Recovery Tribunal, the 1st respondent filed E.A.No.2 of 2021 in E.P.No.8 of 2015 to proceed against the 2nd respondent's other properties and to delete schedule property in Execution Petition in Old Survey Nos.482 & 483 and New Survey No.542 which are shown as three items of properties and all the three properties are in the joint patta in the name of the 2nd respondent along



with 21 others of the family and he sought for substitution of the properties available in Nedugula Village, Kotagiri Taluk, Nilgiris District in Survey Nos.779/1, 2, 3 of 1.3 acres of agricultural lands/Item-1 and Survey Nos.789/6, 8 and 792/19, 20/Item-2 and Survey No.414/2 and 415/Item-3. Of the three substituted properties, Item-3 is again a joint property of one Gopal with six others, hence, this property cannot be attached. The apprehension of the petitioner is that the joint patta properties are attempted to be attached and thereby the petitioner's right on his property is being affected, hence, he filed this civil revision petition questioning the impugned order, dated 12.07.2023 passed by the lower Court. The lower Court coming to a finding that there are two items of properties in the amendment petition which comes to totally 1.88 acres. As per the schedule items, the 1st respondent stated that the 2nd respondent/judgment debtor has 1/3 share in the schedule 2 and 3 items. Therefore, out of 1.88 acres of both Item-2 and Item-3, the 2nd respondent/judgment debtor has 1/3 share of 62.5 cents and EP claim amount is Rs.14,17,749.25/- can be apportioned. Hence, it would be appropriate to include the petition Item-2 and Item-3 alone in the execution petition without including Item-1 of the amendment petition



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wherein the Item-1 is stood in the name of joint Pattadars.

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3.The learned counsel for the 1st respondent/decreed holder submitted that as per Memorandum, both K.A.Ramdass and K.A.Gopal were allotted Schedule D and E mentioned properties respectively and subsequently, *vide* No Objection Certificate, dated 19.10.2000, K.A.Ramdass and all the other brothers and sisters and also the legal heirs of the eldest brother Late K.A.Krishnan, K.A.Ramdass specifically stated that they have no objection to transfer the revenue records and other records and panchayat records in the name of K.A.Gopal in respect of the Schedule mentioned properties allotted to him and they further declared therein that they have no right and interest in the said properties. Two of the said brothers *viz.*, K.A.Shanmugam and K.A.Prabhu who were allotted 12 share in a bungalow, where both of them are residing, had some dispute and consequent on which K.A.Prabhu appears to have filed suit in O.S. No.35 of 2006 before the learned District Munsif, Kothagiri which came to be dismissed by judgement and decree, dated 27.02.2008. Against which, First Appeal in A.S.No.22 of 2008 preferred before the learned Subordinate



Judge, Udthagamandalam and the same was allowed by judgment and decree, dated 11.08.2008. Challenging the same, Second Appeal in S.A.No.438 of 2009 preferred before this Court by K.A.Shanmugam which came to be allowed *vide* judgement and decree, dated 09.10.2015 wherein this Court was pleased to observe that the Memorandum of Family Arrangement/Settlement, dated 01.07.2000 entered into between the legal heirs of late K.N.B.Ajja Gowder and the No Objection Certificate, dated 19.10.2000, which were filed as Documents B1 and B2 in the said Suit has been acted upon and the learned Judge was pleased to specifically hold in para 14 that *“It is clear that suit property was already divided between the parties by metes and bounds. Pursuant to Ex.B1, they have been in separate enjoyment of the same and therefore, the same has been acted upon.”*

4.He further submitted that the properties which have been divided by metes and bounds and held in the name of the 2nd respondent/judgment debtor are to be attached. In fact, the petitioner's father K.A.Ramdoss is signatory to one of the settlement. The petitioner is fighting a proxy war to



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defend the 2nd respondent/judgment debtor and thereby ensure that the decree of the Court becomes unenforceable. It is for the Execution Court Ameena to go to the location, conduct physical verification, take steps for attachment and execute the order of execution. If at all the petitioner has got any valid objection that his property is disturbed and attempted to be attached, he can very well make his objections and file appropriate petition before the concerned Court. Hence, he sought for dismissal of the revision.

5.Considering the submissions and on perusal of the materials, this Court is not inclined to give any observations on the submissions made by the learned counsel for the petitioner and the learned counsel for the 1st respondent. The petitioner who claims to be a third party, is apprehending that his property might be attached and encumbrance would be created. This is far fetched. It is for the Court Ameena to execute the warrant. At this stage, if at all the petitioner has got valid reason and document to show that the property is attempted to be attached, he can very well make his protest therein and take legal remedy thereof.



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6. In view of the above, this Court is not inclined to interfere with the impugned order, dated 12.07.2023 passed by the learned District Judge, Before the District Court of the Nilgiris District, Udhagamandalam. in E.P.No.8 of 2015 in O.S.No.36 of 2012 and the same is confirmed. Accordingly, this civil revision petition stands dismissed. Consequently, connected civil miscellaneous petitions are closed. No costs.

25.07.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes

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To

The District Judge,
Before the District Court of the Nilgiris District,
Udhagamandalam.



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M.NIRMAL KUMAR, J.

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