



A.S.(MD).No.272 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.S(MD)No.272 of 2021

and

C.M.P(MD) Nos.9207 of 2021, 2578 and 6144 of 2023

E.Sivanandam
S/o. R.Ellappan,
Director,
Ariyaman Resorts Private Limited,
Having registered office at
302, Anna Salai,
Chennai – 600 006.
At present at Ramanathapuram.

... Appellant/Petitioner/
Third Party/Third Party

-vs-

1. S.Pathmakumar

... 1st Respondent/1st Respondent
/Decree Holder/Plaintiff

2. S.Sriharan

... 2nd Respondent/2nd Respondent
/Judgment Debtor/Defendant

PRAYER: Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of the Civil Procedure Code, against the order and decretal order in E.A.No.62 of 2019 in E.P.No.12 of 2019 in C.S.No.410 of 2011, on the file of the Principal District Judge at Ramanathapuram, dated 31.03.2021 and thereby dismissing



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the claim petition filed by the appellant under Order 21 Rule 58 of C.P.C.

For Appellant : Mr.H.Lakshmi Shankar

For Respondents : Mr.N.V.V.Krishna – for R1
: Mr.R.Pon Karthikeyan – for R2

J U D G M E N T

This Appeal Suit has been filed by the appellant as against the decretal order passed in E.A.No.62 of 2019 in E.P.No.12 of 2019 in C.S.No.410 of 2011, on the file of the Principal District Judge at Ramanathapuram, dated 31.03.2021, wherein, the appellant herein has filed a petition before the Execution Court, Principal District Judge, Ramanathapuram, under Order 21 Rule 58 of C.P.C. and the Execution Court has dismissed the claim petition of the petitioner.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the trial Court.

3. The brief averments made in the petition filed by the petitioner before the Execution Court are as follows:



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The petitioner is the Director of Ariyaman Resorts Private Limited. The second respondent is another Director of the said Company and he is the judgment debtor. The decree holder and the judgment debtor are the shareholders of the said Company. The Execution Petition was filed as per the order of the High Court in C.S.No.410 of 2011 and in the above said Execution Petition No.12 of 2019, the properties in S.F.No.11 to an extent of 74.5 Acres was brought for sale. As against the sale, the present petition has been filed. The petition mentioned property belongs to the said Company and the Company has purchased the property on 22.09.2005. For the decree passed as against the shareholders of the Company the property belongs to the Company cannot be sold through auction and therefore, the claim of the petitioner in E.P.No.12 of 2019 is liable to be dismissed.

4. The averments made in the counter filed by the first respondent are as follows:

The averments made in the petition are denied as false. The petition is filed only to drag on the proceedings and the respondents from enjoying the fruits of the decree. Therefore, this petition is not maintainable. The property



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was not attached by this Court in the Execution Petition. Hence, if the petitioner has any right he has to file a separate suit. There is no document produced to show that the petitioner is the Director of the said Company. The Execution Petition has been filed only based on the order of the High Court dated 24.04.2013. The petitioner is a third party. This petition has been filed only at the instance of the judgment debtor in order to protract the execution proceedings. Hence, the petition is liable to be dismissed.

5. The counter averments of the second respondent are as follows:

The Execution Petition has been filed based on the order passed by the High Court in C.S.No.410 of 2011. Already the petitioner has filed an execution petition before the High Court in E.A.No.351 of 2012 and challenging the order passed by this Court on 29.08.2017, the second respondent has filed A.Nos.5378 and 5379 of 2017 and the same were dismissed. As against the same O.S.A.No.313 of 2017 was filed and the said appeal also ended in favour of the petitioner to execute the sale deed in favour of the petitioner in respect of the said 74.5 Acres. Therefore, the Execution Petition is not maintainable. However, the second respondent has no objection for allowing the application in favour of the petitioner/claimant.



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6. Before the Execution Court, the petitioner was examined as P.W.1 and he marked Ex.P1 to Ex.P4. On the side of the respondents, the first respondent was examined as R.W.1 and he marked Ex.R1 to Ex.R5. After hearing both sides, the Execution Court has dismissed the petition at the initial stage by disputing the maintainability of the petition. As against the order passed by the Execution Court, the present appeal has been preferred by the petitioner.

7. Aggrieved by the said order of the trial Court, the appellant has preferred the appeal on the following grounds:

1. That the order and decretal order in E.A.No. 62 of 2019 in E.P.No.12 of 2019 in C.S.No.410 of 2011, on the file of the Principal District Judge at Ramanathapuram, dated 31.03.2021 on a preliminary point is contrary to law, manifestly erroneous and against the settled principles of law.

2. That the learned Judge had failed to construe the scope of Order 21 Rule 58 of C.P.C and had proceeded to dismiss the application on mere



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technicalities without even ascertaining the merits of the case.

3. The learned Judge should have seen that an application under Order 21 Rule 58 has to be tried as a suit and it cannot be dismissed as if it is an interlocutory application in a suit.

4. That the learned Judge ought to have seen that the subject matter of property that is attached in execution of a decree is not the absolute property of the 2nd respondent and the title to the property vests in the name of the appellant. Therefore, it is incumbent upon the Court while trying an application under Order 21 Rule 58 to decide the right, title or interest of the claimant.

5. That the learned Judge ought to have seen that the suit on the basis of which the execution had been instituted was one between the brothers the respondents 1 and 2 herein. Pending the suit, the respondents herein had arrived at a compromise. The appellant was not a party to those proceeding. Yet, the property in the name of appellant is sought to be brought to sale and that too, on account of independent liability of the 2nd respondent. In such case, the learned Judge ought to have permitted the petitioner to undergo the trial to substantiate the claim



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application.

6. That the learned Judge ought to have seen that the compromise decree entered into the respondents 1 and 2 does not have any binding effect on the appellant. A compromise decree is in the nature of a contract, superscribed by the seal of the Court. It is binding only on the parties to the compromise and not on third parties. In such case, the property of the petitioner cannot be proceeded in execution for failure on the part of the 2nd respondent to act in accordance with the compromise decree.

7. That the learned Judge after identifying the fact based on the Ex.P1 and P2, being the title documents with respect to the property stands in the name of the petitioner company. The learned Judge ought not to have proceeded to dismiss the application merely on technicalities.

8. That the learned Judge ought to have appreciated that when the title to the property does not stand in the name of the 2nd respondent, and after identifying that the property stands in the name of the appellant company virtue of Exhibits- A1 and A2, must have proceeded to adjudicate the claim of the petitioner.



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9. That the learned Judge had committed a serious error in concluding the claim application merely on a preliminary point in order to bring out the property for auction based on the compromise decree which is not binding on petitioner is ex facie illegal and cries out to be interfered with by this Hon'ble Court.

10. That the learned Judge ought to have appreciated the validity of the Exs.A1 and A2 being the title document and when the same is not being disputed by the respondents, the reasons assailed by the learned Judge in dismissing the claim application is perverse. This is especially in the light of the admissions and questions raised by the first respondent in the cross examination.

11. The learned Judge ought to have seen that it does not require for the petitioner to ascertain the details of the suit proceedings and the execution. The necessity for moving up a claim application has aroused only on account of the fact that appellant property is sought to sold in auction in execution of liability of independent person. The appellant is not even concerned about the compromise decree between the respondents 1 and 2 and in that event the appellant



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property cannot even constructed as one for sale.

12. That the learned Judge ought to have seen that when its being admitted by both the parties that the appellant is registered under the Companies Act, it does not require a separate resolution authorizing a director to file an application.

13. That the order and decreetal order in E.A.No.62 of 2019 in E.P.No.12 of 2019 in C.S.No. 410 of 2011, on the file of the Principal District Judge, Ramanathapuram, dated 31.03.2021, is even otherwise illegal, contrary to law, manifestly erroneous and liable to be set aside.

8. During the pendency of the appeal the appellant has filed petition to receive the documents as additional evidence under Order 41 Rule 27 of C.P.C.

9. The learned counsel appearing for the appellant would contend that the properties sought to be attached belongs to the petitioner's Company and the petitioner is the Director of the Company. The property is not belonging to the Directors and the Directors/respondents are only shareholders and they cannot claim any right over the property of the Company. Thereby, the

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Company properties cannot be sale through Court. But the trial Court without considering the same, dismissed the petition on the ground of maintainability and the petitioner has not produced any documents to show that he is an interested person on behalf of the Company. As per Order 21 Rule 58 of C.P.C, the claim of the petitioner has to be adjudicated before the trial Court and the trial Court has not adjudicated the claim by simply dismissing the petition on the question of maintainability. Therefore, the order passed by the Execution Court is liable to be set aside.

10. In support of his contention, the learned counsel appearing for the appellant has relied upon the following judgments:

- 1. 1997 Law Weekly-92 (Mohanasundaran, K.V.
Vs. Tamil Nadu Civil Supplies Corporation Limited)***
- 2. (1982) 1 Supreme Court Cases 125 (Western
Coalfields Limited Vs. Special Area Development
Authority, Korba and another).***
- 3. 2012 (4) CTC 39 in the High Court of Madras
(Nalini Sivaprakash Vs.K.A.Ganesan)***
- 4. 2023 SCC On line SC 1183 (Appaiya Vs.***



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Andimuthu Alias Thangapandi and others)

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As against the same O.S.No.313 of 2017 was filed and the said appeal also ended in favour of the petitioner to execute the sale deed in favour of the petitioner in respect of the said 74.5 Acres.

11. The learned counsel appearing for the first respondent would contend that already the first respondent has filed Execution Petition in E.P.No.351 of 2013 before the High Court and this Court passed orders on 29.08.2017, allowing the Execution Petition and thereafter, the second respondent filed appeal in A.Nos.5378 and 5379 of 2017 and the same were dismissed. As against the same, the second respondent filed O.S.A.No.313 of 2017 and in the said appeal Hon'ble Division Bench of this Court has directed the second respondent to appear before the Court but he has not appeared and thereafter, the said appeal also ended in favour of the 1st respondent to execute the sale deed in favour of the 1st respondent herein in respect of the said 74.5 Acres. The first respondent has already approached this Court and this Court has passed a decree to execute the sale deed in respect of the same properties under the sale proceedings. Against the same, the second respondent has not filed any appeal. The petitioner also has not filed any



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appeal and this application is filed by the petitioner only to delay the execution proceedings. The Hon'ble Division Bench of this Court has also deprecated the conduct of the second respondent and now only to delay the proceedings this petition is filed. Already, the trial Court also after elaborate discussion dismissed the petition by holding that the petitioner has not produced any documents to show that the executive board of the Company has approved the petitioner to file this petition. Therefore, the present appeal is liable to be dismissed.

12. The learned counsel for the appellant would further submit that the respondents have not denied that the petitioner is one of the Director of the Company and hence, it is not necessary to produce any materials to show that the petitioner is the shareholder and director of the Company in order to secure the properties of the Company. Once the property is purchased in the name of the Company, the shareholders have no right over the property of the Company and the property of the Company cannot be sold for the debts of the Directors or the shareholders and they have no right over the property of the Company.



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13. This Court, after hearing the learned counsel appearing on either side and perusing the records, frames the following point for determination in this appeal is:

(i) Whether this appeal is liable to be allowed or not?

14. The appellant Company has filed the petition before the Execution Court to adjudicate the claim of the petitioner by alleging that the second respondent is the Director of the petitioner's Company namely., Ariyaman Resorts Private Limited and the first respondent has filed a suit in C.S.No.410 of 2011 and got a decree in his favour and thereafter filed the petition for Execution of the decree in E.P.No.62 of 2019, where the first respondent sought for the relief of attachment in respect of the property belongs to the petitioner's Company. The decree and judgment was against the second respondent in his individual capacity and the petition mentioned property belongs to the petitioner's company are not denied by the respondents.

15. On a careful perusal of the order passed by the learned District Judge, it is seen that the Execution Claim Application was dismissed only on



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the ground of maintainability by holding that the petitioner has not proved the authority to file this petition and Ex.P1 and Ex.P2 are the certified copies of the documents.

16. In this context, the learned counsel appearing for the appellant has pointed out that though the said documents are the copies of certified copies as per Section 65 of the Indian Evidence Act they are the public documents and thereby can be marked as secondary evidence. But the trial Court has not considered the said aspect and dismissed the petition.

17. In this context, the learned counsel for the appellant argued that the certified copies of the public documents are comes under the purview of Section 65 of Evidence Act, but the trial Court failed to consider the same. To support of his contention he relied the judgment of Hon'ble Apex Court in ***Appaiya Vs. Andimuthu alias Thangapandi and others***) reported in **2023 SCC online SC 1183**, wherein the Hon'ble Supreme Court held in paragraph Nos.21 to 24 are as follows:

“21. At the outset, it is very much relevant to note that the finding of fact by the trial Court that Exts. A1 to



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A5 are all registered with Sub-Registrar's office was not disturbed, rather, agreed by the First Appellate Court. As a matter of fact, the High Court also did not reverse the said findings on facts. Indisputably, the appellant has produced the registered copy of (Exhibit A1) sale deed No. 1209/1928 dated 27.08.1928 executed by sons of Vellaiya Thevar in favour of Puliyankaladi. [Section 61](#) of the Evidence Act provides that the contents of documents may be proved either by primary or secondary evidence. [Section 63](#) which is an inclusive definition of secondary evidence provides under sub- section (1) thereof that, "certified copies given under the provisions hereinafter contained" constitute secondary evidence. Certainly, cases falling under [Section 65](#) form exception to the mandate under [Section 64](#) that documents must be proved by primary evidence. [Section 65](#) provides that secondary evidence relating to documents may be given of the existence, condition or contents of a document in the various cases given thereunder. [Section 65](#), in so far as, it is relevant for the purpose of this case reads thus:-

*"65. Cases in which secondary evidence relating to documents may be given.—
Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —*

(a)..



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(b)..

(c)..

(d)..

(e) when the original is a public document within the meaning of [section 74](#);

.....

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.”

(Underline supplied)

22. [Section 74](#) deals with documents which are public documents. Sub-section (2) thereof makes public records kept [in any State] of private documents within the purview of “public document” under [Section 74](#). Going by [Section 76](#), certified copies of public documents shall be given, on demand, by the public officer having the custody of public document, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title. Such copies so certified shall be called certified copies in terms of [Section 76](#).



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23. It is to be noted that in the case on hand, a certified copy of Exhibit A1 sale deed dated 27.08.1928 was produced by the appellant. As noted earlier, the Courts below found that it is registered with the Sub-Registrar's Office. The contention of respondent(s) is that it is only a certified copy and not the original document. In the light of the aforementioned provisions under the [Evidence Act](#) there can be no doubt with respect to the permissibility for the production of such a certified copy as secondary evidence in law, in regard to the existence, condition or contents of a document. As per [Section 77](#) of the Evidence Act such certified copies may be produced in proof of the contents of the public document concerned. [Section 79](#) deals with presumption as to genuineness of certified copies. [Section 77](#) and [79](#) of the Evidence Act reads thus:-

“77. Proof of documents by production of certified copies. — Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

79. Presumption as to genuineness of certified copies. — The Court shall presume [to be genuine] every document purporting to be a certificate, certified copy or other document, which is by Law



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declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer [of the Central Government or of a State Government, or by any officer [in the State of Jammu and Kashmir] who is duly authorized thereto by the Central Government]:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.”

24. In view of the provision under [Section 79](#) of the Evidence Act, [Section 57 \(5\)](#) of the Registration Act assumes relevance in the context of the case and it reads thus:

“57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.—

- (1)..*
- (2)..*
- (3)..*



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(4)..

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents."

(Underline supplied)

18. On a careful perusal of the said judgment it is clear that the certified copies of a public document within the meaning of Section 74 of Evidence Act can be taken as secondary evidence as per Section 65 (e) of Evidence Act. But the trial Court has not looked into the certified copies of the sale deeds produced by the petitioner. Further, there is no denial on the part of the respondents about the capacity of the petitioner as the director of the Company. Therefore, the trial Court ought to have decided the claim of the petitioner. In this context, as rightly contended by the learned counsel for the appellant/petitioner, the trial Court has to adjudicate the claim of the petitioner instead of dismissing the same on maintainability. The learned counsel appearing for the appellant has relied upon the judgment of this Court in ***Mohanasundaran, K.V. Vs. Tamil Nadu Civil Supplies Corporation Limited*** in (1997) Law Weekly – Page 92.



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19. On a careful perusal of the said judgment it is clear that while dealing in petition under Order 21 Rule 58 of C.P.C, the Court has to adjudicate the claim and the same is mandatory.

20. The learned counsel appearing for the 1st respondent relied upon the judgment of the Delhi High Court in ***AIR 2006 Delhi 4 in (Pradip Vaid Vs.M/s. Universal Constructors and others)*** wherein the Division of the Delhi High Court held that the claim petition cannot be entertained if they filed objecting that it is unnecessarily delayed. In the case on hand, the claim of the petitioner is that the property belongs to the Company and the said claim has to be adjudicated. Further the learned counsel appearing for the respondent also relied the judgment in ***Barnes Investments LTD., and others Vs. Raj K.Gupta and others*** reported in ***(2001) 7 Supreme Court Cases 94.*** On a careful perusal of the said judgment it is clear that under Order 21 Rule 58 (1) of C.P.C, no claim or objection shall be entertained where the Court considers that the claim or objection was designedly or unnecessarily delayed. But the trial Court has not adjudicated the claim and dismissed the case at the preliminary stage without going into the merits of the case. Therefore, the



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trial Court ought to have adjudicated the claim of the petitioner. Therefore, the order passed by the trial Court is not in accordance with law and the same is liable to be set aside. At the same time since the trial Court has not gone into merits of the case, it is just and proper to remand the case to the trial Court for fresh consideration after providing opportunity to the parties and to direct the Execution Court to dispose of the case within a period of three months from the date of receipt of a copy of this order.

21. Since this Court decided that the matter has to be remanded back to the Execution Court, the petitioner in C.M.P(MD) No.2578 of 2023 is at liberty to file the said documents before the trial Court and the trial Court has to decide the same on merits in accordance with law and this petition is closed.

22. In the result, this Appeal Suit is allowed and the order passed by the Execution Court in E.A.No.62 of 2019 in E.P.No.12 of 2019 in C.S.No.410 of 2011, on the file of the Principal District Judge at Ramanathapuram, dated 31.03.2021 are set aside and the matter is remanded back to the Execution Court for deciding the case afresh as indicated above in accordance with law



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on merits. Considering the nature of the case, the Execution Court is directed to dispose of the application within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal District Judge,
Ramanathapuram.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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