



A.S.No.224 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 08.07.2025

Pronounced on: 16.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.224 of 2025

& C.M.P.No.6014 of 2025

Rukmini Kulathi
D/o. Ramakulal,
No.1-135-D Kandur,
Kavrady, Kundapura,
Kavrady,
Udupi-576211, Karnataka.

... Appellant/Petitioner/Third Party
Claimant

/versus/

1. M/s.A.B.Industries
by Proprietrix A.Shanthi,
Wife of Alagirisamy,
No.733/3, Thottipalayam Road,
Aerodrome Post, Coimbatore.

... Respondent/Respondent/
Decree Holder

2. M/s.NMR Alloys
Rep. by R.Susheela,

3. R.Susheela
Wife of Ramananda,

4. Nikitha

D/o. Ramananda,

5. Minor Manyaby



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Guardian and mother R.Susheela,
All at 3rd Floor, Gnanalakshmi Complex,
No. 996/997, Meetupalayam Road,
R.S.Puram, Coimbatore 641002.

... Respondents/Respondents/
Judgment Debtors

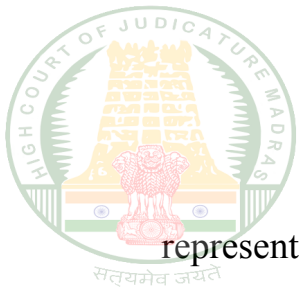
Prayer:- Appeal Suit has been filed under Section 96 read with Order 41 Rule 1 of the Civil Procedure Code, to set aside order and Decree dated 02.12.2024 made in E.A.No.1 of 2024 in E.P.No.26 of 2024 before the Commercial Court (District Judge Cadre), Coimbatore, and allow the Appeal.

For Appellant : Mr.V.T.Narendiran
For Respondents : Mr.S.Arjun, for R1
: Mr.A.Sriram, for R3 to R5
: Service not completed, for R2

J U D G M E N T

The appellant herein is the unsuccessful third party claimant before the Execution Court, to declare her as the absolute owner of the property, which sought to be attached and sold for recovery of Rs.73,00,000/- being the decree amount, pursuant to the decree dated 02.01.2024 passed in C.O.S.No.72 of 2023 on the file of the Commercial Court (District Level), Coimbatore.

2. M/s A.B.Industries, the first respondent herein, instituted commercial suit C.O.S.No.72 of 2023 against the second Respondent M/s N.M.R.Alloys,



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represented by R.Suseela for recovery of Rs.64,41,352/- being the amount due and payable for the supply of cast steel shots, with interest at the rate of 6% for sum of Rs.61,88,652/- from the date of the suit, till the date of realisation. Along with the suit, an application under Order 38, Rule 5 of C.P.C. for Attachment Before Judgement, the property now in dispute was sought.

3. The suit was contested by the defendants stating that the M/s N.M.R.Alloys, a proprietor Firm was run by one Ramananda. After his demise, during the last week of April 2021, the Firm got closed. It is false to plead that the second defendant (Suseela, W/o Ramananda) continuing the business. The third and forth defendants are children of Ramananda. The plaintiff is stranger to defendants 2 to 4. It was also contended that the alleged transaction of sale of goods and outstanding of Rs.61,88,652/- is false and specifically denied. The documents relied by the plaintiff are self-serving and will not bind the defendants.

4. In the application in I.A.No.01 of 2021 filed under Order 38, Rule 5 of CPC for Attachment Before Judgement (ABJ), the learned counsel for the respondents/defendant made an endorsement on 25.04.2022 that the defendant

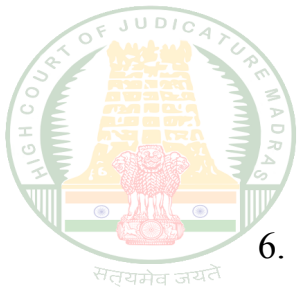


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undertakes not to alienate the petition mentioned property till 21.06.2022.

Recording the said endorsement, the Court had adjourned the matter to 21.06.2022. Then, the case has been adjourned time to time for enquiry. Finally, on 08.12.2022, the ABJ application was closed based on the undertaking given. Later, the suit was decreed on 02.01.2014. Pursuant to the decree, Execution Petition in E.P.No.26 of 2024 filed under Order XXI, Rule 54 of C.P.C. to attach and sell the property, which was already the subject matter of ABJ application.

5. Meanwhile, the appellant herein, who is the sister of the second defendant/respondent (Tmt.Suseela), had come to know about the SARFAESI proceedings initiated by Indian Bank for the mortgage loan availed by M/s NMR Alloys pledging the title document of the subject property. She came forward to rescue the second defendant on her promise that on clearing the bank debt, she will sell the property to the appellant. On her request and promise, the appellant negotiated with the Indian Bank and cleared the loan by remitting Rs.80 lakhs. Thereafter, she obtained No Due Certificate from the Indian Bank and also got back the original title document.

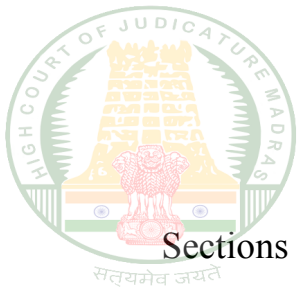


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6. The property was purchased by Ramananda and on his death, it has devolved on his wife and two children namely, Nikitha and Minor.Manya. They each entitled for 1/3 share. After clearing the Indian Bank debt, Nikitha on 14.07.2023 settled her 1/3rd share in favour of her mother Suseela, W/o Ramananda. On behalf of the minor Manya, her mother Suseela sold her 1/3rd share in the property to the appellant on the same day (14/07/2023). For consideration of Rs.15,00,000/-, Suseela conveyed her 1/3rd share to the appellant. Thus, the appellant had become the title holder of the property in entirety. Rs.15 lakhs, which is part of the sale consideration, is kept in the bank deposit for the welfare of the minor.

7. Stating the above facts, the appellant had filed E.A.No.1 of 2024 under Order XXI, Rule 58 and Section 151 of C.P.C. to declare her as the absolute owner of the subject property and dismiss the execution petition.

8. The application to declare the appellant as absolute owner of the property resisted by the decree holder (the first respondent/plaintiff). According to the decree holder, the appellant is a *lis pendens* purchaser. Such transfer is hit by



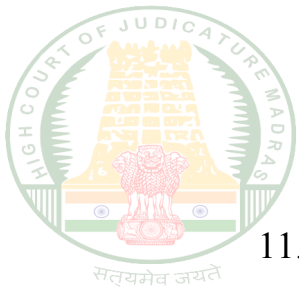
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Sections 52 and 53 of the Transfer of Property Act. Her sale deed is fraudulent and

collusive. No SARFAESI proceedings was initiated by Indian Bank against M/s NMR Alloys. The respondent had given a written undertaking through her counsel that she will not alienate the property. She has however alienated in breach of the undertaking. Hence, the conveyance is not valid and unsustainable in law.

9. Tmt.Suseela, (one of the judgment debtors) who is the third respondent in I.A.No.1 of 2014, filed counter in support of the appellant confirming the alienation of the property in favour of the appellant to clear the Indian Bank debt and to save the property from distress sale in auction. The factum of loan from Indian Bank and subsequent one time settlement of the loan admitted.

10. The specific contention of the third respondent is that, the alienation of the property on 14.07.2023 is valid and legally permissible, since her undertaking in the ABJ application was for a limited period up to 21.06.2022 only. Thereafter, there was no legal impediment for her to alienate the property. Hence, the alienation in favour of the appellant on 14.07.2023 will not suffer *lis pendens*.



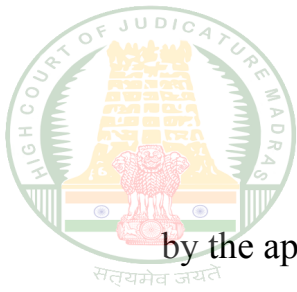
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11. The Trial Court taking into consideration the undertaking given on 22.04.2022 and the closure of the ABJ application on 08.12.2022. Though the undertaking is only up to 21.06.2022, the closure of ABJ application was based on the undertaking after adjourning the enquiry on the application for several dates. This indicates that the undertaking not to alienate binds the defendants/respondents. The Trial Court has relied upon the judgment of the Supreme Court in *Bank of Baroda –vs- Sadruddin Hasan Daya and another* reported in (*AIR 2004 SC 942*) wherein the below passage of Halsbury's Law of England is quoted :

“An undertaking given to the court in pending proceedings by a person or corporation (or by a government department or Minister of the Crown acting in his official capacity) on the faith of which the Court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and a breach of the undertaking is misconduct amounting to contempt. Therefore, an undertaking given by the party before the Court amounts to an order of injunction issued by the Court”

12. The point for determination:

Whether the undertaking given by the respondent in the ABJ petition (3rd respondent herein) deemed to be in force on 14.07.2023, the date on which the appellant purchased the subject property and whether the purchase of the property



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by the appellant suffer the ill of *lis pendens* ?

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13. The undertaking given by the counsel for the respondent (Susheela) on 22.04.2022 and the order of the Court passed on 22.04.2022 recording the undertaking and later closure of the ABJ application on 08.12.2022 will clearly establish the intention of the parties and the reasoning behind the order. Hence, extracted verbatim below: -

25/04/2022:

Enquiry.

“ The defendant undertakes not to alienate the petition mentioned property(the petition mentioned property in I.A.No.1 of 2021 is the petition mentioned property in this petition also) till 21/06/2022”.

Sd/-

Counsel for Respondent/Defendant

25/04/2022:

Both side counsels were present. Respondent/defendant counsel made an endorsement that the respondent will not alienate the petition mentioned property till 21.06.2022. In view of the endorsement this petition is adjourned to 21.06.2022.

Endorsement made by the Respondent/Defendant is recorded.

Sd/-



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14. Thereafter case been adjourned for enquiry on 21.06.2022, 15.07.2022, 16.08.2022, 30.08.2022, 16.09.2022, 13.10.2022 and 21.11.2022.

15. When the case was adjourned to 08.12.2022, the Court has closed the application recording,

“Based on the undertaking given, this petition is closed.”

16. Obviously, the undertaking given on 25.04.2022 though only upto 21.06.2022 deemed to have been continued and live. That is the reason that when the ABJ application was closed, the undertaking has been taken note by the Learned Judge. The Court's intention was to continue the embargo of alienating the property, that is why the ABJ application was closed recording the undertaking. Otherwise, the Court ought not to have referred the undertaking, there is no reason to refer the undertaking, while closing the ABJ application except to bind the respondent. On looking from another angle, ABJ application under Order 38 Rule 5 of CPC is filed and entertained for giving protection to the plaintiff, who anticipated alienation of the property pending suit, by the



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defendants to defeat the right which may accrue to the plaintiff as Decree holder.

While so, the application could not have been closed without providing the protection. The undertaking given is intended to act as injunction on the party, who had given the undertaking. Or else, the closure of the ABJ without providing protection will be an absurdity. Therefore, the appellant cannot make a claim that her purchase does not fall within the scope of *lis pendens* purchase.

17. It is also to be taken note about the claim of bonafide of the applicant, who is the purchaser pendent lite. She claims that she had transferred the money into the account of her sister Suseela, who in turn cleared the loan. She also admits that 2/3 share in the property were settled in her favour and remaining 1/3rd, she purchased and the sale consideration of Rs.15,00,000/- been deposited in the name of the minor daughter of Suseela. However, no proof for transferring Rs.80,00,000/- into the Bank Account of Suseela or for deposit of Rs.15,00,000/- in the name of the Minor Manya is produced before the Court. This adds support to the allegation that the alleged alienation, despite the undertaking to the Court is only a fraudulent transfer, created in collusion between the appellant and her sister the judgement debtor.



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18. The right of the decree holder cannot be mutilated by *pendent lite* transfer devising a scheme of apparent fraud. It is a clear case of collusion between the judgement debtor and her sister the appellant herein, to delay and deprive the right of the decree holder. Hence, the order of the Trial Court dismissing the application filed under Order XXI, Rule 58 of C.P.C., is confirmed.

19. In the result, **the Appeal Suit stands dismissed.** The Order and decree dated 02.12.2024 made in E.A.No.1 of 2024 in E.P.No.26 of 2024 on the file of the Commercial Court (District Judge Cadre), Coimbatore is confirmed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

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Index :Yes/No.

Neutral citation :Yes/No.

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To,

1. The Commercial Court (District Judge Cadre), Coimbatore.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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delivery judgment made in
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and
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