



C.R.P.No.858 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.No.858 of 2023
and C.M.P.No.6444 of 2023

Elumalai

... Petitioner

-Vs-

1.D.Ramanujam
2.Lalitha
3.Santhanadhan

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the order and decreetal order dated 06.02.2023 made in E.A.No.3 of 2022 in E.P.No.38 of 2009 in O.S.No.343 of 2022 by the learned Principal Sub Judge, Puducherry.

For Petitioner : Ms.G.Sumitra

For Respondents : Mr.T.S.Baskaran – for R1

ORDER

Challenge has been made to the order dated 06.02.2023 made in E.A.No.3 of 2022 in E.P.No.38 of 2009 in O.S.No.343 of 2022, dismissing the application filed by the revision petitioner to implead himself in the Execution Petition.



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2. The background of the case is that, originally a suit has been filed by the first respondent herein for recovery of money as against the respondents 2 and 3 for a sum of Rs.4,50,000/- along with interest at 12%. The judgment has been passed decreeing the suit as prayed for with interest at 12% per annum from the date of the plaint till the date of the plaint. However, in the decree the interest has been restricted to 6% per annum on the sum of Rs.4,50,000/- from the date of the plaint till the date of realisation.

3. During the pendency of the suit, an application has been taken out by the decree holder for attachment of the property before judgment in I.A.No.1456 of 2002. It appears that the said application has been ordered. The revision petitioner has also filed another application in I.A.No.2181 of 2004 to raise the attachment, raising the contention that he has purchased the property on 02.01.2003, much prior to the judgment. However, the said application has been dismissed by the Trial Court, which has been confirmed on appeal in C.M.A.No.3 of 2015 and finally on appeal before this Court in C.M.S.A.No.1 of 2016, wherein, it is observed by this Court that the purchase is hit by the doctrine of *lis pendens* and that the petitioner is not a bonafide purchaser.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.



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5. The finding of this Court made in C.M.S.A.No.1 of 2016 has reached finality. Though this Court is not in a position to concur with the legal position to apply the doctrine of *lis pendens* to the money decree, the fact remains that the observation made against the petitioner has reached finality, as the judgment has not been challenged.

6. Be that as it may. The decree holder, to realise the amount, has made an attempt to bring the property for sale. At this stage, the revision petitioner has filed an application to implead himself in the execution proceedings. That application has been dismissed citing the earlier orders passed as against the petitioner.

7. The main ground on which the challenge has been made by the revision petitioner is that, the interest ordered in the judgment was only 6% from the date of the plaint till the date of realisation, whereas the decree has been drafted for 12% interest from the date of the plaint till the date of realisation. According to the petitioner, they are willing to deposit the amount as per the judgment, whereas the learned counsel for the first respondent would submit that since the decree indicates the interest at the rate of 12% per annum, the decree will prevail over the judgment. The parties are not in dispute insofar as the other aspects are concerned.

8. The contention of the learned counsel for the first respondent that the



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decree will prevail over the judgment has no legs to stand. The decree has to be drafted only in terms of the judgment and not *vice-versa*. Merely because the decree has been drafted improperly by the Court, that will not give any leverage to the plaintiff to claim extra interest. At the most, the plaintiff is entitled to 6% interest from the date of the plaint till the date of realisation as directed in the judgment. Now the revision petitioner is also willing to deposit that amount.

9. In that view of the matter, since the concern of the decree holder is only to realise the amount, the revision petitioner is permitted to implead himself in the execution petition. Therefore, the order rejecting the impleadment shall stand set aside and the revision petitioner is impleaded as a party in the Execution Petition. The revision petitioner may deposit the principal amount along with interest at the rate of 6% per annum from the date of the plaint till the date of realisation to the credit of the Execution Petition. On such deposit, the attachment made by way of the order in I.A.No.1456 of 2022 shall be raised by the trial Court and the same shall be intimated to the concerned Registrar Office.

10. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2025

Index : Yes/No



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Neutral Citation : Yes/No
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To

The Principal Sub Judge,
Puducherry.



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N. SATHISH KUMAR, J.

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