IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2025

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.1518 of 2024
and
C.M.P.No.10725 of 2024 & C.M.P.No.13507 of 2025

C. Sowmya raga, ... Appellant

Vs.

1. The Inspector General of Registration,
100, Santhome High Road,
Mullima Nagar, Medavelipakkam,
Raja Annamalai Puram, Chennai-600028.

2. The Sub Registrar,
Sriperumbudur,
SH 57, Ramanujar Nagar,
Sriperumbudur, Tamil Nadu-602105.

3. The Tax Recovery Officer 6,
Uthamar Gandhi Salai,
No.46, Nungambakkam High Road,
Nungambakkam, Chennai-600 034.

4. Sally Thermoplastic India Limited,
No.229 E,C/2, Third Floor,
Raahat Plaza, No.172, Arcot Road,
Vadapalani, Chennai -600026. ... Respondents

Prayer: Writ Appeal under Clause 15 of the Letters Patent Act, against the Order dated 23.02.2024 passed in W.P.No.28774 of 2019.

For Appellant	:	M/s.S.Sridhar & A.S.Sriraman
For R1 & R2	:	Mr.U.Baranidharan Special Government Pleader
For R3	:	Ms.S.Premalatha Senior Standing Counsel
For R4	:	Not ready in notice

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This Intra Court Appeal is directed against the Order dated 23.02.2024 passed by the Writ Court in W.P.No.28774 of 2019 (hereinafter referred to as 'Impugned Order').

2. The Appellant was the Writ Petitioner in the above Writ Petition and had prayed for a Mandamus to direct the 2nd Respondent / Sub-Registrar to remove the attachment entry made by the 3rd Respondent / Tax Recovery Officer over the immovable property measuring 67 cents comprised in Survey No.238/4

(65 cents) and Survey No.238/5C (2 cents) situated at Mevalurkuppam Village, Sriperumbudur Taluk, Kancheepuram District and to direct the 2nd Respondent / Sub-Registrar to make appropriate entries stating that the said attachment has been lifted and to allow the Petitioner to enjoy the property without any hindrance.

3. By the Impugned Order dated 23.02.2024, the Writ Court dismissed the Writ Petition filed by the Writ Petitioner / Appellant with the following observations:-

> *"... 7. Admittedly, the fourth respondent is the original owner of the property and there was a complaint against the fourth respondent before the CBI and they have also conducted raid on 16.12.2010 and they have also requested the investigation wing of the third respondent to investigate regarding the evasion of the Income Tax. They have also issued summons on 17.02.2011 under Section 131 of the Income Tax Act and issued scrutiny notice under Section 143(2) of the Income Tax for the assessment years 2009-10 and 2010-11 on 30.09.2011. Subsequently, the petitioner purchased the land from the fourth respondent only on 02.11.2011. Later, summons were issued by the third respondent and therefore, the transaction made by the fourth respondent is void.* ***Since the sale made by the fourth respondent in favour of the petitioner is not valid one, the petitioner is not entitled to the relief sought for in the Writ Petition.****"*

4. The Appellant / Writ Petitioner has purchased the aforesaid property from the 4th Respondent on **02.11.2011.** The impugned attachment was made on **31.03.2013.** The 4th Respondent has sold the property to the Appellant / Writ Petitioner on 02.11.2011 after investigation began against the 4th Respondent. During the pendency of the assessment proceedings for the Assessment Years 2009-2010 and 2010-2011 and after the assessment proceedings were initiated against the 4th Respondent for the Assessment Years 2005-2006 to 2008-2009 with the issuance of a Notice under Section 148 of the Income Tax Act, 1961 on the dates mentioned in Table to the Impugned Order dated 23.02.2024 of the Writ Court.

5. The aforesaid details are extracted hereunder:

A.Y.	Notice issued under Section	Date of issue of notice	Date of completion of assessment	Tax	Interest	Total	Remarks
2009-10	143(3)	29.09.2011	30.12.2011	4,35,075/-	1,95,985/-	6,31,060/-	Normal assessment
2010-11	143(2)	29.09.2011	31.03.2013	1,12,221,204/-	40,45,637/-	1,52,66,841/-	-do-
2005-06	148	26.03.2012	30.03.2013	10,23,531/-	11,05,412/-	21,28,943/-	Re-opened Assessment
2006-07	148	26.03.2012	30.03.2013	24,12,847/-	23,16,332/-	47,29,179/-	-do-
2007-08	148	23.03.2012	30.03.2013	14,78,812/-	12,43,615/-	27,22,427/-	-do-

A.Y.	Notice issued under Section	Date of issue of notice	Date of completion of assessment	Tax	Interest	Total	Remarks
2008-09	148	23.03.2012	30.03.2013	19,16,215/-	14,04,890/-	33,21,105/-	-do-
Total				**1,84,87,684/-**	**1,03,11,871 /-**	**2,87,99,555/-**	

A.Y.	Notice issued u/s	Date of issue of Penalty Notice	Date of Penalty order	Penalty levied u/s 271(1)(c)
2009-10	271(1)(c)	30.12.2011	29.06.2012	19,435/-
2010-11	271(1)(c)	31.03.2013	30.09.2013	1,10,34,132/-
2005-06	271(1)(c)	30.03.2013	30.09.2013	15,55,393/-
2006-07	271(1)(c)	30.03.2013	30.09.2013	16,98,280/-
2007-08	271(1)(c)	30.03.2013	30.09.2013	14,51,398/-
2008-09	271(1)(c)	30.03.2013	30.09.2013	12,65,398/-
Total				**1,70,24,036/-**

6. The challenge to the Impugned Order dated 23.02.2024 of the Writ Court is on the ground that the attachment under Rule 11(5) of the II Schedule of the Income Tax Act, 1961 is not permissible in law as the Appellant / Writ Petitioner had become an absolute owner of the property on 02.11.2011.

7. The above submission cannot be countenanced as the sale was made after initiation of the assessment proceedings by the Respondents with a view to defeat the rights of the Income Tax Department / 3rd Respondent.

8. As per Section 281 of the Income Tax Act, 1961 where, during the pendency of any proceeding under the Act, or after completion thereof, before

service of notice under Rule 2 of the Second Schedule, any assessee creates any charge of his assets in favour of any other person or part of the possession by way of sale, mortgage, gift, exchange or any other mode of trasnfer whatsoever, such charge or transfer is void against any claim in respect of any tax or any other sum payable by an assessee as a result of completion of the said proceedings or otherwise.

9. The contention of the Appellant / Writ Petitioner that the Appellant / Writ Petitioner is a bonafide purchaser cannot be countenanced as the purchase of the said property was after assessment proceedings were initiated against the 4th Respondent under the provisions of the Income Tax Act, 1961. Whether the Appellant/Writ Petitioner was a bonafide purchaser or not certainly cannot be decided in a summary proceedings under Article 226 of the Constitution of India. In case, the Appellant / Writ Petitioner wants to establish that the Appellant / Writ Petitioner was a bonafide purchaser of the aforesaid property from the 4th Respondent, it is for the Appellant / Writ Petitioner to establish the same by filing a civil suit.

10. Although not referred to, it will be useful to refer to the decision of

the Hon'ble Supreme Court in **Tax Recovery Officer II** Vs. **Gangadhar Vishwanath Ranade**, (1998) 6 SCC 658, wherein it was held as follows:-

> *"9. The Tax Recovery Officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void. If the Department finds that a property of the assessee is trasnferred by him to a third party with the intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declaredvoid under Section 281.*
>
> *10. The provisions, therefore, of Rule 11 are analogus to those of Order 21 Rules 58 to 61 and 63 of the Code of Civil Procedure as they stood prior to the amendment of the Civil Procedure Code in 1976. in fact, the language of Order 21 Rules 60 and 61is similar to the language of Rule 11(4) and Rule 11(5) of the Second Schedule to the Income Tax Act. Similarly, the language of Order 21 Rule 63 is similar to the language of Rule 11(6). Rules 59 to 62 of Order 21, prior to the amendment of 1976, provided for a summary investigation into possession as distinct from a thorough trial of ultimate right. No doubt, it is impossible to separate altogether the question of possession and of title. Thus, if the judgement-debtor was in possession, he may have been in possession as agent or trustee for another; and this has to be enquired into. To that extent, title may be a part of the inquiry. Similarly, if the property attached is claimed by a third party who adduces evidence to show that that he was possessed of the property under some kind of a title, the property will have to be released from attachment. The procedure is not meant to decide intricate questions of law as to title to the property. Therefore, where a claim is made to the property attached by someone claiming to be a transferee from the judgement-debtor and the claim is disallowed, the claimant can institute a suit under Order 21 Rule 63 to stablish his title to the property. In such a suit, it*

would be open to the attaching creditor to plead in defense that the trasnfer was in fraud of the general body of creditors and was void under Section 53 of the Transfer of Property Act. Similarly, if the claim of the transferee is allowed, the attaching creditor may sue on behalf of himself and all other creditors under Section 53 of the Transfer of Property Act for a decalration that the transfer was void as it was in fraud of the creditors.

....

12. In the light of this discussion about the provisions of Order 21 Rules 58 to 63, if we examine Rule 11(4) of the Second Schedule to the Income Tax Act, it is clear that the Tax Recovery Officer is required to examine whether the possession of the third party is of a claimant in his own right or in trust for the assessee or on account of the assessee. If he comes to a conclusion that the transferee is in possession in his or her own right, he will have to raise the attachment. If the department desires to have the transaction of transfer declared void under Section 281, the Department being in the position of a creditor, will have to file a suit for declaration that the transaction if transfer is void under Section 281 of the Income Tax Act.

13. In the present case, the Tax Recovery Officer could not have examined whether the transfer was void under Section 281 of the Income Tax Act. His adjudication of the transfer as void under Section 281 is without jurisdiction. The Tax Recovery Officer has relied upon the earlier order of the Income Tax Officer dated 09.05.1974 declaring that the transaction is void under Section 281 of the Income Tax Act. In the earlier proceedings, however, although the High Court has not set aside this order of the Income Tax Officer, the High Court has expressly held that the order amounted only to an intention or declaration on part of the Department to treat the transaction as void under Section 281. Such a declaration cannot affect the legal rights of the parties affected under Rule 11. The High Court expressly held that the rights of the parties under Rule 11 were not affected in any way of this declaration. The Department, therefore, cannot proceed on the assumption that the transaction is void under Section 281, nor can the Tax Recovery Officer, while proceeding under Rule 11, declare a transction of transfer as void under Section 281 by

relying on the order of 0-5-1974 or otherwise. His jurisdiction relates to examining possession, and only incidentally, any question of right to possession as claimed by the objector. The High Court has, therefore, rightly set aside the order of the Tax Recovery Officer.
14. However, the right of the Department to have the transfer declared as void under Section 281 of the Income Tax Act, as it stood at the relevant time, is not thereby taken away. We are informed that the property continues to be under attachment by virtue of interim orders passed in this appeal. The Department may, if it desires, take appropriate proceedings in accordance with law for having the transfer declared as void under Section 281 of the Income Tax Act."

11. The decision of the Hon'ble Supreme Court in Tax Recovery Officer II Vs. Gangadhar Vishwanath Ranade (1998) 234 ITR 188 was rendered when the said provision read slightly differently. As per the said provision, only if there was an intention to defraud the revenue, such creation of charge or parting of possession by way of sale, mortgage, exchange or any other mode of transfer were void as against any claim in respect of any tax or any other amount/sum payable by an assessee as a result of completion of the said proceeding.

12. There, the Court held that the Tax Recovery Officer himself cannot declare a transfer of property made by the assessee in favour of a third party to be void as his position is in itself that of a creditor. The Court further held that if the Tax Recovery Officer finds such transfer to have been effected with the intent to defraud the Revenue, then the Department will only have to file a civil

suit under Rule 11(6) to have the trasnfer declared void under Section 281 of the Income Tax Act, 1961.

13. Whereas, the amended provision as it stands today and during the period in dispute, the requirement of transfer with an intention to defraud the revenue has been done away. Any transfer during the pendency of any proceedings or after completion thereof, before service of notice under Rule 2 of the Second Schedule is void as against the Department under the circumstances specified therein.

14. The decision of the Hon'ble Supreme Court in **Tax Recovery Officer II** Vs. **Gangadhar Vishwanath Ranade**, (1998) 6 SCC 658 therefore cannot be applied as it was decided in the context of the provision as it stood then under similar circumstances. The ratio of the Court in the aforesaid case therefore cannot be applied in the context of the changed provisions.

15. Further, in the present case, as mentioned earlier, the trasnfer of the aforesaid property was made by the 4th Respondent in the name of the Appellant/Writ Petitioner pursuant to the initiation of assessment proceedings against the 4th Respondent by the Revenue Department with issuance of Notice

under Sections 143 and 148 of the Income Tax Act, 1961 and whereby, a charge was created on the properties belonging to the Appellant/Writ Petitioner in case of non-payment of tax dues.

16. Though, the attachment of the said property was made on 31.03.2013 by the Revenue Department for the tax dues pursuant to the completion of assessment proceeding, it is evident that the transfer of property by the 4th Respondent to the Appellant/Writ Petitioner was to defraud the Revenue and escape the tax liability.

17. In the light of the above discussion, we find no ground to interfere with the conclusion arrived by the Writ Court in the Impugned Order dated 23.02.2024 in W.P.No.28774 of 2019.

18. Accordingly, this Writ Appeal is liable to be dismissed. Liberty is however given to the Appellant / Writ Petitioner to file a civil suit to declare that the Appellant / Writ Petitioner was a bonafide purchaser of the said property from the 4th Respondent.

19. In view of the above reasoning, this Writ Appeal stands dismissed.

Consequently connected miscellaneous petitions are closed. No order as to costs.

[S.M.S., J.] **[C.S.N., J.]**

10.09.2025

Neutral Citation : Yes / No

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To

1. The Inspector General of Registration,
   100, Santhome High Road,
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S.M.SUBRAMANIAM, J.
and
C.SARAVANAN, J.

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<u>W.A.No.1518 of 2024</u>

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