



CRP.No.2231 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated 07.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP.No.2231 of 2025

S.Ramakrishnan

... Petitioner

Versus

P.Gurumoorthy

... Respondent

PRAYER : Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 20.01.2025 made in EP.No.10 of 2023 in O.S.No.119 of 2018 on the file of the learned District Munsif Court, Tiruchengode.

For Petitioner : M/s.K.Vijayalakshmi

For Respondent : No appearance

ORDER

The order in and by which the learned District Munsif, Tiruchengode had dismissed the application filed under Order XXI Rule 11 of CPC by the decree holder/petitioner on the ground that house is sought to be attached in execution and that property is the only property of the judgment debtor/respondent; since he is a labourer, therefore, exempted from attachment under Section 60 of Code of Civil Procedure is put in issue before this Court by filing the present revision



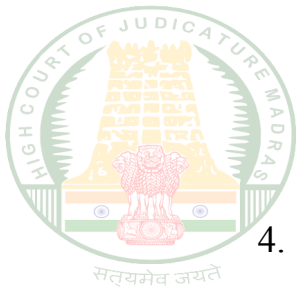
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petition.

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2. Though notice has been served on the respondent and name being printed in the cause list, none appeared on his behalf. Considering the issue arose in this revision, this Court is inclined to take up the matter and dispose of the same on merits on the basis of the records available on record.

3. The plaintiff has filed a suit for recovery of money of a sum of Rs.83,737.50/- and other reliefs in O.S.No.119 of 2018. After trial, the said was decreed on 26.04.2022. To realise the decretal amount of Rs.1,12,722, the petitioner/plaintiff filed EP.No.10/2023 on the file of the learned District Munsif, Tiruchengode for attaching two of the properties shown as Item Nos.1 and 2 in the execution petition. Item No.1 is in respect of the house property and item No.2 is an agricultural property. The Trial Court had simply dismissed the application on the ground that property of the labourer cannot be attached invoking provisions under Section 60 (c) of Code of Civil Procedure.



4. Heard the learned counsel for the petitioner and perused the materials placed on record.

5. Subject to the proviso to sub section (1), Section 60 of the CPC deals with all saleable property which belongs to the judgment debtor that may be attached and sold in execution of a decree against him. Proviso to sub section (1) of that Section carves out the various properties which shall not be liable to such attachment of sale. (c) under that proviso gives protection to the agriculturist against the the attachment of his residential house. By the amended Act of 1976 to the Code, that benefit had been extended to a 'labourer' and 'domestic servant' as well. Clause (c) of the proviso reads as follows:

60.

...

(c)houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant]and occupied by him;

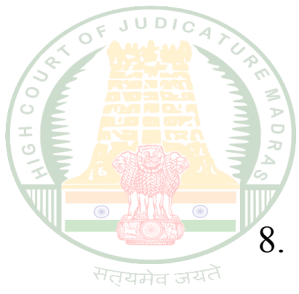
6. The above clause (c) to sub-section (1) of Section 60 of CPC makes it clear that houses and other buildings with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment



belonging to an agriculturist or a labourer or a domestic servant and occupied by

WEB COPY him is not liable to be attached.

7. To avail the benefit under Section 60(1) (c) of CPC, it must be shown that houses and other buildings belonging to an agriculturist or a labourer or a domestic servant. A person who take such a plea to get an exemption has to establish that he is a laymen by profession and he has no other work other than coolie work. Similarly, a person set up a plea as a domestic servant, burden lies on him to establish that he is a domestic servant and he has no other avocation. In the absence of evidence in this regard, merely, on the basis of plea taken by such persons, the Executing Court ought not to have dismissed the application. It is the bounden duty of the Executing Court to decide as to whether a person seeking exemption would fall within the ambit of Section 60 (c) of Code of Civil Procedure. That has to be seen only on the evidence not on the basis of mere plea. Further, it is also to be noted that the Executing Court has not even taken note of other item, which is an agricultural land sought to be attached. This Court is of the view that the learned Judge without applying mind had mechanically dismissed the application.



8. In this backdrop, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Appasaheb Tuljaram Desai and others vs. Bhalchandra Vithalrao Thube* reported in AIR 1961 SC 589, wherein, the Hon'ble Supreme Court has held that before a person could claim to be an agriculturist "he must at least show that he was really dependent for his living on tilling the soil and was unable to maintain himself otherwise".

9. Same test is also adoptable in the case of labourer or domestic servant, who has also been brought in along with agriculturist under Section 60(1)(c) of the CPC as entitled to the exemption from attachment of the building in their occupation in execution of a decree. The labourer or domestic servant must show that he is dependent for his livelihood, sustenance in life, from his labour or service as the case may be and is unable to maintain himself otherwise. That test alone is required to be satisfied by the labourer or domestic servant to prove his entitlement for exemption from attachment of the residential building under his occupation as contemplated under the rule. The initial burden, no doubt, is on the judgment debtor to show that he is entitled to the benefit under Section 60(1)(c) of the CPC; but, once he discharges that burden, the decree holder has to show by



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convincing evidence that he is not an agriculturist, labourer or domestic servant

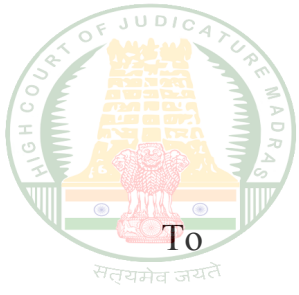
WEB and thus, not entitled to the benefit.

10. As far as the plea of exemption sought under Section 60(c) of CPC, the Executing Court has to decide the same on evidence. Such view of the matter, the impugned order is liable to be set aside and the same is hereby set aside. The matter is remitted back to the Executing Court and the Executing Court is directed to decide afresh.

11. Accordingly, this revision stands allowed. No costs.

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WEB 1. The District Munsif, Tiruchengode

2. The Section Officer
VR Section, Madras High Court



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N. SATHISH KUMAR, J.

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