

A.S.Nos.590 & 644 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : 03.06.2025

CORAM:

**THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

Appeal Suit. Nos.590 & 644 of 2024

and

C.M.P.Nos. 18359 & 20521 of 2024

**A.S.No.590 of 2024**

Hariharan

... Appellant

-Vs-

M.Aandi Gounder (died)

1. Sundarammal

2. Dhanasekaran

3. T.A.Sampathkumar

4. A.Senthilkumar

5. N.Krishnamoorthy

... Respondents

**Prayer:-** Appeal Suit filed under Order 41 Rule 1 and Section 96 of Civil Procedure Code to set aside the fair and decreetal order dated 17.04.2024 passed in R.E.A.No.4 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 on the file of the learned Additional District Judge, Krishnagiri.



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**A.S.No.644 of 2024**

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Senthil

... Appellant

-Vs-

M.Aandhi Gounder (died)

1. Sundarammal

2. Dhanasekaran

3. T.A.Samathkumar

4. A.Senthilkumar

5. N.Krishnamoorthy

... Respondents

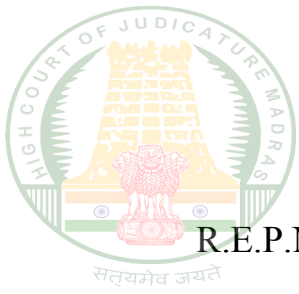
**Prayer:-** Appeal Suit filed under Order 41 Rule 1 and Section 96 of Civil Procedure Code to set aside the fair and decreetal order dated 17.04.2024 passed in R.E.A.No.6 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 on the file of the learned Additional District Judge, Krishnagiri.

For Appellant  
in both Appeals : Mr.R.Marudhachalamurthy

For Respondents  
in both Appeals : Mr.T.S.Baskaran for R-1 to R-4  
No Appearance for R-5

### **COMMON JUDGMENT**

These First Appeals have been filed to set aside the fair and decreetal order dated 17.04.2024 passed in R.E.A.Nos.4 & 6 of 2022 in



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R.E.P.No.3 of 2013 in O.S.No.4 of 2006 on the file of the learned

Additional District Judge, Krishnagiri.

***2. The brief facts which are relevant for consideration are as follows:-***

The Appellant in Appeals before this Court are claimants in R.E.A.Nos.4 & 6 of 2022 in R.E.P.No.03 of 2013 in O.S.No.4 of 2006. The Appellant in A.S.No.590 of 2024 is the son of Krishnamoorthy. He had filed the Appeal against the dismissal of the Claim Petition/REA.No.4 of 2022 in R.E.P.No.03 of 2013 in O.S.No.4 of 2006 seeking dismissal of R.E.P and to decree the Claim Petition in R.E.A.No.4 of 2002, the Respondents 1 to 5 are the Petitioners in R.E.P.No.3 of 2013 and the father of the claimant/Krishnamoorthy as sixth Respondent.

2.1. In R.E.P.No.3 of 2013, the Petitioners are the Decree Holders in O.S.No.4 of 2006 and the Respondent is the Judgment Debtor in O.S.No.4 of 2006 on the file of the then learned Principal District Judge, Krishnagiri.

2.2. The Suit in O.S.No.4 of 2006 was filed by Andigounder against Krishnamoorthy based on a promissory note dated 16.05.2005. In the



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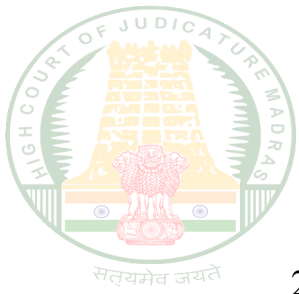
plaint itself, the Plaintiff had stated that the Defendant owns the property worth more than Rs.15,00,000/- and derives only income of Rs.3,00,000/-.

Therefore, the Plaintiff restricts the interest at the rate of 9% as the Defendant is an agriculturist. In the written statement, the Defendant had claimed that he had borrowed money from various persons including the Plaintiff and signed the blank unfilled promissory note on non-judicial stamp papers. He had not repaid the loans due to the failure of the monsoon as he sustained a loss. Unable to repay the loan obtained from the Plaintiff and other persons, he filed I.P.No.4 of 2006 before the learned Sub Judge, Dharmapuri to declare him as an insolvent and the Insolvency Petition is also pending. Knowing fully well of the Insolvency Petition, the Plaintiff had filed the Suit. Therefore, the Defendants seek dismissal of the Suit. Based on the written statement, the learned Principal District Judge had framed the following issues:-

- (i) Whether the Plaintiff obtained signature of Defendant in a blank non-judicial stamp paper is true?*
- (ii) Whether Suit promissory note is true and valid?*
- (iii) Whether Suit is barred by limitation?*
- (iv) Whether the Plaintiff is entitled to claim the Suit amount including interest as prayed for?*
- (v) To what relief the Plaintiff is entitled?*

**Issue No.1 is recasted as follows:-**

*“Whether the Defendant has signed in a blank promissory note?”*



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2.3. The Plaintiff examined himself as P.W-1 and One Sivashankar who is the witness to the promissory note examined as P.W-2 and marked documents as Ex.A-1 to Ex.A-3. Ex.A-1 is a promissory note dated 16.05.2005 executed by the Defendant in favour of the Plaintiff. Ex.A-2 is the certified copy of the Plaint in O.S.No.36 of 2006. Ex.A-3 is the certified copy of the Insolvency Petition. The Defendant had examined himself as D.W-1. The Inspector of the Income Tax Department was examined as D.W-2. After completion of evidence, after hearing the arguments of both parties, the then learned Principal District Judge by Judgment dated 27.07.2009 in O.S.No.4 of 2006 decreed the Suit. In continuation of the Decree, Andigounder/Decree Holder had filed counter before the learned Additional District Judge, Krishnagiri seeking attachment and sale of the properties to the Defendant/Judgment Debtor in S.No.379/1A an extent of 1.51.0, S.No.379/2 an extent of 0-88-0, S.No.379/2 an extent of 0-80-0, S.No.377/2 an extent of 0-27-5, S.No.378/1 an extent of 0-11-0, S.No.379/1C an extent of 0-02-0 with well and 5 H.P.Pumpset therein, S.No.379/2 an extent of 1-50-5. A house site bearing Old S.No.45/1 and New S.No.776/22 extent of 0-0028. S.No.102/2 extent of 0-82-0, S.No.102/4 extent of 0-20-0, S.No.103/1



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extent of 0-13-0, S.No.103/3 extent of 0-10-0, A two storied traced house and vacant site in S.No.776/2020.

2.4. Pending R.E.P for attachment and sale of property, the son of the Defendant/Judgment Debtor/Hariharan had filed R.E.A.No.4 of 2022 in R.E.P.No.3 of 2013. R.E.A.No.6 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 filed by Senthil/Claimant claiming that on the date of filing E.P, the property was not in the name of the Defendant/Judgment Debtor. It was already partitioned in favour of the sons and daughters.

2.5. A.S.No.590 of 2024 was filed by Hariharan who is the claimant in R.E.A.No.4 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 on the file of the learned Additional District Judge, Krishnagiri. After full contest, REA was dismissed by the learned Additional District Judge dated 27.07.2009. Against which, the claimant in R.E.A.No.4 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 had preferred this Appeal in A.S.No.590 of 2024.

2.6. In R.E.A.No.4 of 2022, the Decree Holders as well as the Judgment Debtors were impleaded as Respondents 1 to 6. The 6<sup>th</sup>



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Respondent is none other than the father of the claimant.

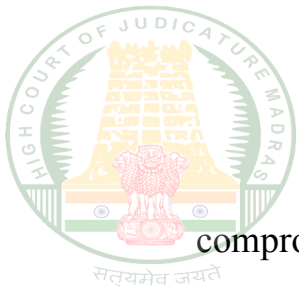
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2.7. In R.E.A.No.6 of 2022 in R.E.P.No.03 of 2013 in O.S.No.4 of 2006, pending R.E.P, the Decree Holder/Andiappan died. Therefore his wife and sons impleaded themselves as Petitioners 2 to 4.

2.8. The Petitioners in R.E.P and the sole Respondent in R.E.P were impleaded as Respondents 1 to 5 in R.E.A/Claim Petition.

2.9. Having borrowed the money, the sole Defendant in O.S.No.04 of 2006 is aware of the consequences. He had filed I.P.No.4 of 2006. As per the written statement, in filing I.P, the Petitioner in I.P had to declare his assets and liabilities before the Insolvency Court. The claimant in REA.No.4 of 2022 claims that the Suit in O.S.No.1 of 2009 was filed by them against their father seeking partition. In which, pending Suit, father as well as the sons entered into a compromise and filed a Joint Compromise Memo on 24.01.2009 by which the properties were allotted to the sons. Therefore, the Suit for partition was decreed in favour of the Plaintiff/son and the other Defendants are brothers and sister of Hariharan. The first Defendant is the father of the Plaintiff. As per the memo of

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compromise, the Suit for partition was decreed in favour of the Plaintiff and other Defendants 2 to 4. In O.S.No.1 of 2009, the Suit for partition was filed by Hariharan/Plaintiff against the Defendants. In which, as per the settlement, no property was allotted to the second Defendant. 'A' property was allotted to Plaintiff and 'B' property was allotted to fifth Defendant. 'A' property are in S.Nos.379/1A, 379/1C, 379/2, 376/2, 377/2, 378/1 and 375/3.

2.10. 'B' property in favour of the fifth Defendant, the building constructed in D.No.2/183 bearing Electricity Service Connection No.174 which was worth about Rs.2,00,000/- on the date of grant of decree i.e., 21.04.2009 in REA.No.4 of 2022 in REP.No.3 of 2021 in O.S.No.4 of 2006. The Petitioner/Claimant/Hariharan was examined as P.W-1, he had filed his affidavit which contains the fact stated in the Claim Petition as it is. In the cross-examination, he had admitted that he is a graduate, he completed B.Com. Therefore, he is well-versed in English. He had admitted in cross-examination that there was a decree against his father under Ex.R-1 and Ex.R-2 marked during the cross-examination of claimant. Also, he had admitted in cross-examination that the father had preferred I.P.No.4 of 2006 before the learned Sub Judge, Dharmapuri. He



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also admitted that he had filed a Suit for partition only before the learned

Sub Judge, Dharmapuri. The Suit for partition in O.S.No.1 of 2009 is filed

against his paternal grandfather and his father. The suggestion that the

Suit was settled within the next two hearings was admitted by him in cross-

examination. The suggestion of the learned Counsel for the

Respondent/Decree Holder that when the paternal grandfather/Kodiappan

@ Kumbalakayan was alive and his father/Krishnamoorthy was also alive,

he could not maintain the Suit for partition, was denied by him. He

admitted that on the basis of an amicable settlement, the final decree itself

was granted by the learned Sub Judge whereby the house alone was

allotted to the fifth Defendant in the Suit in O.S.No.1 of 2009 and other

agricultural properties were allotted to Plaintiff and no property was

allotted to the father of the Plaintiff.

2.11. While filing I.P.No.4 of 2006, the Petitioner in I.P who is the

Defendant in O.S.No.4 of 2006 had stated clearly that he does not possess

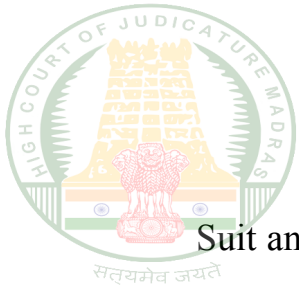
any immovable properties that were admitted by the Plaintiff in O.S.No.1

of 2009 (Suit for partition) and the Claim Petition in E.A.No.4 of 2022.

The suggestion that the Suit in O.S.No.1 of 2009 filed by the Plaintiff, the

Claimant in REA itself is not maintainable. On the date of filing of the

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Suit and as per the decree granted, final decree had been granted within the next two hearings whereby the fifth Defendant/brother of the Plaintiff had been allotted house and house site whereas the Plaintiff was allotted agricultural lands, was admitted by him. Only with an ulterior motive to cause loss to the Decree Holder in O.S.No.4 of 2006, the Suit in O.S.No.1 of 2009 was filed by the son of the Defendant in O.S.No.4 of 2006 before the learned Sub Judge, Dharmapuri. If the *bona fides* are true, they ought to have filed the Suit before the learned Principal District Judge, Krishnagiri, was denied by him. The Suit was filed in the year 2009. I.P was filed in the year 2006 by the father of the claimant who is the sole Defendant in O.S.No.4 of 2006 before the learned Principal District Judge. If the intention of the Petitioner in I.P had been *bona fide*, he ought to have filed the I.P before the learned Principal District Judge, Krishnagiri was also denied by him. Therefore, I.P as well as Suit for partition in O.S.No.1 of 2009 before the learned Sub Judge, Dharmapuri has no evidentiary value in the light of the Suit in O.S.No.4 of 2006 having decreed after full contest. The suggestion that the Suit in O.S.No.1 of 2009 and I.P.No.4 of 2006 are not at all maintainable, the decree granted in favour of the Plaintiff in O.S.No.1 of 2009 is also not maintainable and that the decree itself is enforceable as to be ignored, was also denied by him.

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**WEB COPY** 2.12. In the Counter filed by the Decree Holders as Respondents in

R.E.A.No.4 of 2022, they had claimed that E.A itself is not maintainable and R.E.P is to be ordered. The Counter filed by the sixth Respondent/Judgment Debtor in R.E.P.No.3 of 2013 claims that there was a decree in favour of the sons of the Judgment Debtor in O.S.No.1 of 2009, knowing fully well this R.E.P had been filed as the sixth Respondent does not own any property. Therefore, this R.E.P is to be dismissed. Also, in the counter filed by the sixth Respondent, he had claimed that in the R.E.P filed by one Krishnamoorthy, notice had been served on the Decree Holder and he remained ex-parte even though I.P was decreed in favour of the Petitioner in I.P/sixth Respondent in R.E.A.No.4 of 2022 and the sole Respondent in R.E.P.No.3 of 2013.

2.13. The contents of the counter filed by the sixth Respondent itself indicate that there had been collusion between the claimant and the sixth Respondent.

2.14. From the cross-examination of the Petitioner/Claimant, it can be safely concluded that this Claim Petition had been filed with an



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intention to defeat the Execution Proceedings instituted by the Decree Holder/Plaintiff in O.S.No.4 of 2006.

3. The learned Counsel for the Appellant in A.S.No.590 of 2024 submits that Appellant had filed R.E.A.No.4 of 2022 in E.P.No.3 of 2013 in O.S.No.4 of 2006 in which the Respondent-6 is the Defendant in Suit in O.S.No.4 of 2006. The Respondent-1 died. Therefore, the legal heirs of the Respondent-1 were impleaded as Respondents 2 to 5 in the Suit in O.S.No.4 of 2006 on the file of the learned Principal District Judge, Krishnagiri. The Suit on the promissory note was preferred by the first Respondent against the Respondent-6. As per the Judgment dated 27.07.2009, the suit was decreed.

3.1. In continuation of the decree, R.E.P was filed. R.E.P.No.3 of 2013 in O.S.No.4 of 2006 was also ordered. At that stage, the Appellant herein had moved Claim Petition. The Claim Petition was dismissed by the learned Principal District Judge, Krishnagiri observing that when the properties are attached, he can file an application. Subsequently, he filed R.E.A.No.4 of 2022 after the attachment notice was ordered. R.E.A was resisted by Respondents 2 to 5 who were the Petitioners in R.E.P.No.3 of 12/25



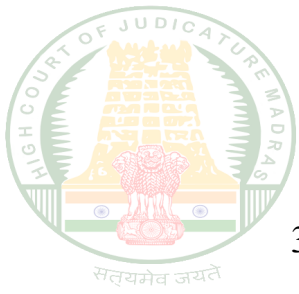
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2013 stating that the Petitioner/Claimant in R.E.A.No.4 of 2022 claim that there was a Suit in O.S.No.1 of 2009 in which there was a partition. The decree for partition was granted. Based on the decree only, the Claimant had filed R.E.A.No.4 of 2022. The learned Additional District Judge, Krishnagiri by order dated 17.04.2024 dismissed the Claim Petition claiming that the decree obtained by the Claimant in the Suit in O.S.No.1 of 2009 is a collusive Suit between the Defendant in O.S.No.4 of 2006 and his sons.

3.2. Aggrieved by the same, the Petitioner in R.E.A.No.4 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 had approached this Court by filing this Appeal. Pending Appeal, he seeks a stay of the execution decree in R.E.P.No.3 of 2013.

3.3. The learned Counsel for the Appellant in A.S.No.644 of 2024 submitted that the Appeal is filed against the dismissal of the Claim Petition by the learned Additional District Judge, Krishnagiri dismissing the claim petition in R.E.A.No.6 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006.



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3.4. It is the contention of the learned Counsel for the Appellant that the Execution Petition was filed by the Respondents 1 to 5 against the 6th Respondent for recovery of money. Based on the decree in O.S.No.4 of 2006, the R.E.P was filed against the property of the 6th Respondent.

3.5. It is the contention of the learned Counsel for the Appellant herein that the property does not belong exclusively to 6th Defendant. It is the ancestral property of the Claimant. Therefore, the Claimant has filed R.E.A.No.6 of 2022 on the strength of the earlier decree in O.S.No.1 of 2009 between the 6th Respondent and other Co-sharers. The Suit in O.S.No.1 of 2009 was decreed in favour of the Plaintiff as per the Judgment and decree dated 21.04.2009. Based on the same, the Claim Petition was filed. After due enquiry, the learned Additional District Judge, Krishnagiri had dismissed R.E.A.No.6 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 by Judgment dated 17.04.2024. Therefore, this Appeal is filed seeking to set aside the judgment in R.E.A.No.6 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 dated 17.04.2024.

4. The learned Counsel for the Respondents in Appeal submitted that the Judgment of the learned Principal District Judge is a well-reasoned



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Judgment. The learned Judge had considered the facts and circumstances

of this case subsequent to the grant of decree in O.S.No.4 of 2006. Only to

defeat the decree, the Judgment Debtor had instigated his sons to file the

Suit in O.S.No.1 of 2009 for partition and the Judgment Debtor himself

had filed I.P. Both the Suit in O.S.No.1 of 2009 and I.P.No.4 of 2006

before the learned Sub Judge, Dharmapuri, if the *bona fide* of the

Defendant in O.S.No.4 of 2006 had been true, he ought to have filed I.P

before the very same Court where the Suit in O.S.No.4 of 2006 is pending.

Further, the learned Counsel for the Respondent pointed out that in the

Insolvency Petition, the Petitioner in I.P who is the Defendant in O.S.No.4

of 2006 had given an undertaking that he had not sold or encumbered any

property within three years prior to the filing of the Petition. He claims

that he does not possess any property which is not true which has been

contradicted in O.S.No.1 of 2009. Therefore, it is nothing but a collusive

Suit between the Plaintiff in O.S.No.1 of 2009 and the Defendant in

O.S.No.1 of 2009. After filing of the Suit for partition within the next two

or three hearings, they have arrived at an amicable settlement. In the

amicable settlement, the house site/property was allotted to Senthil s/o.

Krishnamoorthy and the agricultural lands in various Survey Numbers

which are shown as property in E.P had been allotted to

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Plaintiff/Hariharan. The same is reflected in the counter filed by the sixth

Respondent/Judgment Debtor stating that knowing fully well that the

property had been allotted to the sons of the Judgment Debtor, the E.P had

been filed as though the sixth Respondent owns such land. Therefore, the

Claim Petition is to be allowed and the R.E.P is to be dismissed. The

learned Principal District Judge had considered the facts and circumstances

under which the Claim Petition was filed, the circumstances under which

I.P had been filed, and had taken into consideration the totality of the

circumstances and held that the transactions are collusive in nature and this

Claim Petition was also as a result of collusion between the Defendant and

his son and thereby rejected the contention raised in the Claim Petition that

the properties belonged to the Claim Petitioner. In the cross-examination,

the Claimant had conceded to the suggestion of the learned Counsel for the

Respondent/Decree Holder, the Claimant as P.W-1 that in I.P, no property

had been shown. In the Insolvency Petition, the father of the Petitioner

herein had claimed that he did not own any land, which was admitted by

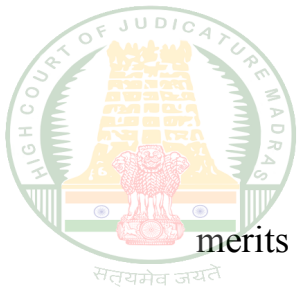
P.W-1 in his cross-examination. Under those circumstances, based on the

proper appreciation of evidence, the learned Principal District Judge had

rightly dismissed the Claim Petition in R.E.A.No.6 of 2022 in R.E.P.No.3

of 2013 in O.S.No.4 of 2006 dated 17.04.2024. Hence, the Appeals lack

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merits and are to be dismissed.

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4.1. The learned Counsel for the Respondent further submitted that the Suit was decreed in the year 2009 and the Insolvency Petition is of the year 2006 was ordered in favour of the Insolvency Petitioner. The Suit in O.S.No.1 of 2009 was filed in the year 2009 which gives a presumption that it is filed only as an afterthought, after the decree in O.S.No.4 of 2006. Therefore, the Appeal lacks merits and is to be dismissed. Even though the decree granted in O.S.No.4 of 2006 in the year 2009, the Decree Holder could not reap the benefits of the decree and the Defendants in the Suit had protracted the Execution Petition proceedings by filing Execution Petition through his sons as though he did not own any property. The Judgment of the learned Principal District Judge dismissing the R.E.A.Nos.4 & 6 of 2022 in R.E.P.No.3 of 2013 in O.S.No.04 of 2006 are found proper and it does not warrant any interference of this Court and the Appeal lacks merits and is to be dismissed.

***Point for Consideration:-***

***Whether the Judgment of the learned Principal District Judge in REA.Nos. 4 & 6 of 2022 in REP.No.3 of 2013 in O.S.No.4 of 2006 dated 17.04.2024 are to be set aside as perverse?***



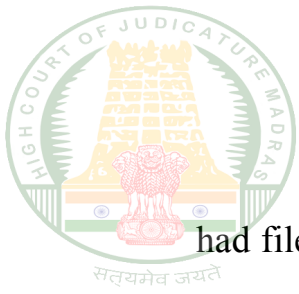
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**WEB COPY** 5. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondents 1 to 4/Plaintiff before the trial Court.

6. Perused the original records.

7. On perusal of the original records, it is found that the claimant herein as P.W-1 had conceded that the Suit in O.S.No.1 of 2009 and the I.P.No.4 of 2006 were both filed before the learned Sub Judge, Dharmapuri. Also, he had conceded that the father of the Claimant/sixth Respondent in the Claim Petition as the Petitioner in I.P.No.4 of 2006 had stated in the Insolvency Petition that he does not own any property. Those facts are conceded by P.W-1 in his cross-examination. Therefore, considering the totality of the circumstances, the Suit filed at the earliest stage in O.S.No.4 of 2006 was taken out for disposal in the year 2009 and as per the Judgment dated 27.07.2009, the Suit was decreed in favour of the Plaintiffs. The Decree Holder had filed R.E.P.No.3 of 2013 at that stage, the Judgment Debtor had instigated the son of Hariharan/Plaintiff in REA.No.4 of 2022 and Senthil/Plaintiff in REA.No.6 of 2022.

8. The facts are that the sixth Respondent, the father of the Claimant



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had filed a counter in REA, claiming that the Suit property belonged to the

Claimant. Also, the sixth Respondent in the Claim Petition had filed I.P

wherein he had not stated that he held the property, which is found to be

not true. Therefore, the grant of decree in I.P in favour of the father of the

Claimant will not hold to wriggle out of the Execution Proceedings. The

contention of the learned Counsel for the Appellant that the learned Judge

had dismissed the R.E.A claiming it was a collusive R.E.A, when the

Decree Holder had not stated anything in his conduct cannot be accepted.

Therefore, the finding of the learned Principal District Judge dismissing

the R.E.A.Nos. 4 & 6 of 2022 as perverse cannot at all be accepted. On

perusal of the Judgment of the learned Principal District Judge, Krishnagiri

dismissing the R.E.A.Nos. 4 & 6 of 2022 in R.E.P.No.3 of 2013 is found

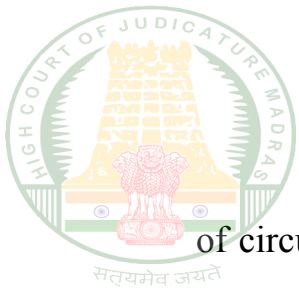
proper. This Court as an Appellate Court cannot thrust, as the finding of

the trial Court was arrived at after proper discussion of evidence as per the

Provisions of the Indian Evidence Act.

9. The claim of the Claimant was that the Respondent had not stated that they were colluding. Therefore, the dismissal on the ground that there is collusion between the parties is not maintainable. The said submission of the learned Counsel for the Appellant has to be rejected. In the totality

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of circumstances available on appreciation of evidence on Ex.P-1 to Ex.P-4, it is found to be nothing but collusion only. The Court can draw inference based on the facts available in the Court along with the circumstances raised in the facts of the case.

10. The sixth Respondent in R.E.A.Nos.6 & 4 of 2022 as Judgment Debtor in R.E.P.No.3 of 2013 having filed I.P that he does not own any property is found not to be true. In filing I.P, the Petitioner shall undertake that he does not own properties or he has not dealt with any property vested in him within three years immediately before filing I.P. From those circumstances, it can be concluded that it is nothing but collusion between the father and the son, with the father alone being the Judgment Debtor in O.S.No.4 of 2006. Therefore, the discussion of the evidence and the conclusion arrived by the learned Principal District Judge dismissing R.E.A.Nos.4 & 6 of 2022 in R.E.P.No.3 of 2013 is found proper and it does not warrant interference by this Court.

11. In the result, the First Appeals are dismissed. The learned Principal District Judge is directed to dispose off the R.E.P as early as possible.

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**WEB COPY 12.** From the original records placed before this Court, it is found

that the Suit in O.S.No.1 of 2009 is nothing but collusive. As per the principles governing partition, there shall be denial for a claim of partition.

The Partition opens upon the death of the head of the joint family. Here, the head of the joint family is father of the Plaintiff/second Defendant and

paternal grandfather of the Plaintiff/first Defendant. In the Suit in

O.S.No.4 of 2006, the Plaintiff had clearly stated that the Defendant was

possessed of valuable properties worth about more than Rs.15,00,000/- and

was earning an income from the agricultural land i.e., Rs.3,00,000/-.

Therefore, having known about the wealth of the Defendant only, the

Plaintiff had advanced a loan of Rs.5,00,000/-. While so, after contest,

there was a decree in favour of the Plaintiff in O.S.No.4 of 2006 dated

27.07.2009. Therefore, only to defeat the decree, the Suit in O.S.No.1 of

2009 was filed before the learned Sub Judge, Dharmapuri regarding

I.P.No.4 of 2006, the Petitioner in I.P is the Defendant in O.S.No.4 of 2006

on the file of the learned Principal District Judge, Krishnagiri. If the

intention of the Petitioner in I.P had been bonafide, he should have

preferred the I.P.No.4 of 2006 in the very same Court where the Suit was

pending. Also, it is mandatory that a person who approaches the

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Insolvency Court has to declare his assets and liabilities on the date of

filing of I.P, there shall not be any transfer of property in the name of the

Petitioner in I.P to third parties or to the relatives, within three years prior

to the date of filing of I.P. Therefore, the Petitioner claiming in I.P.No.4 of

2006 is found not *bona fide*. Therefore, even if there is a decree in favour

of the Petitioner, the Order of I.P will not be binding upon the Execution

Court in this case. It is the claim of the Claimant that as on the date of the

filing of the IP, there was no property left in custody or ownership of the

Petitioner/Krishnamoorthy. Therefore, the Petitioner in E.P is not

maintainable and is to be dismissed. The property vested with the

Defendant was already decreed in favour of the Plaintiff in O.S.No.1 of

2009. Therefore, R.E.P is not maintainable is the contention of the

Claimant/Petitioner. On assessment of evidence, it is found that the

admission made by the claimant in cross-examination that the Suit in

O.S.No.1 of 2009 was decreed within two or three successive hearing dates

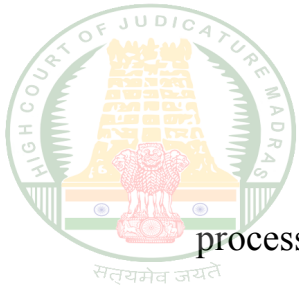
and the admission made by the Claimant as P.W-1 that the father of the

Claimant who is the sole Respondent/Judgment Debtor in REP as

Petitioner in I.P had claimed that there was no property in his possession.

Under those circumstances, the learned Principal District Judge,

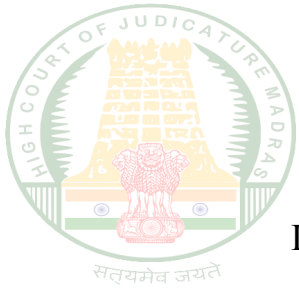
Krishnagiri dismissed the Claim Petition stating that it is an abuse of



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process of law as it is a collusive decree in favour of the Claimant's father in I.P and the partition of the properties 'A' Schedule having been allotted to the Claimant herein and 'B' property allotted to the fifth Defendant in O.S.No.1 of 2009 will be sufficient for the Court to draw adverse inference from the facts and circumstances of the case regarding the conduct of the Defendant in O.S.No.4 of 2006 that he had instigated his son to institute the Suit and other proceedings so that the properties are protected from the Court auction. Therefore, the observation made by the learned Principal District Judge dismissing the Claim Petition is found proper and it is a well-reasoned Order and does not warrant interference by this Court.

13. In the light of the above discussions, the point for consideration is answered in favour of the Respondents/Decree Holder and against the Appellant. The fair and decreetal order dated 17.04.2024 passed in R.E.A.Nos.4 & 6 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 on the file of the learned Additional District Judge, Krishnagiri is not perverse.



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In the result, the *Appeal Suits are dismissed*. The fair and decreetal order dated 17.04.2024 passed in R.E.A.Nos.4 & 6 of 2022 in R.E.P.No.3 of 2013 in O.S.No.4 of 2006 on the file of the learned Additional District Judge, Krishnagiri are confirmed. Consequently connected Miscellaneous Petitions are closed. No costs.

**03.06.2025**

dh  
Index : Yes/No  
Speaking/Non-speaking order

To

1. The Additional District Judge,  
Krishnagiri.
2. The Section Officer,  
V.R.Section,  
High Court, Madras.



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**SATHI KUMAR SUKUMARA KURUP, J.,**

dh

Pre-delivery Judgment made in  
Appeal Suit. Nos.590 & 644 of 2024

03.06.2025