



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 27.10.2025

Order pronounced on : 31.10.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.4779 of 2025

R.Ravinder Kumar

... Petitioner

Vs.

A.M.Sarabai

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair order dated 08.08.2025 in E.P.No.2394 of 2016 in O.S.No.9233 of 2010 on the file of the XXVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.Nandhakumar
for M/s.Eswar, Kumar and Rao

ORDER

The decree holder is the revision petitioner. The respondent is the judgment debtor, defendant in the suit.



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2.I have heard Mr.Nandhakumar, learned counsel for the revision petitioner.

3.Mr.Nandhakumar, learned counsel for the revision petitioner would contend that the executing Court has erroneously proceeded to dismiss the execution petition filed under Section 60 r/w Order XXI Rules 54 and 64 of CPC, seeking attachment and sale of the mortgaged property in favour of the petitioner/decree holder. He would submit that the petitioner has a valid registered mortgage dated 12.12.1986 in his favour and consequent to the judgment debtor's failure to settle the mortgage amount, the revision petitioner has been constrained to file a suit in O.S.No.9233 of 2010. The said suit for recovery of a sum of Rs.10,21,768/- came to be decreed by the XVI Additional Judge, City Civil Court, Chennai on 29.04.2016. The respondent remained ex-parte and did not choose to contest the suit.

2.It is in pursuance of the said decree that the petitioner has moved the executing Court. However, the executing Court, by order dated 08.08.2025, has dismissed the execution petition, stating that the petitioner



had not proved the validity and genuineness of the mortgage deed in Doc.No.3259 of 1986 and further on the ground that the petitioner cannot proceed with the execution petition in the absence of the transferee, who has purchased the property, pending the suit. In support of his contention, the learned counsel for the revision petitioner would rely on the following decisions:

1.N.N.L.Ramaswami Chettiar Vs. Mallappa Reddiar, reported in ILR (1920) 43 Mad 760.

2.Kallubandi Nanjamma Vs. Kethe Rangappa and others, reported in AIR 1954 Mad 173.

3.V.P.S.Viswanathan Vs. Sri Raja Yarns Traders, reported in 2010 (2) MWN (Civil) 232.

4.T.Komati Vs. Sundaram Finance Limited and others, reported in 2019 SCC Online Mad 16815.

3.I have carefully considered the submissions advanced by the learned counsel for the petitioner. I have gone through the records.

4.In view of the fact that the respondent has remained ex-parte and has not chosen to contest the suit as well as the execution petition, I am dispensing with notice to the respondent in this revision.



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5.The petitioner has obtained a decree for recovery of money in O.S.No.9233 of 2010. The said decree is put to execution and the petitioner seeks attachment and sale of the property, which is already mortgaged in favour of the petitioner, in and by a registered mortgage deed dated 12.12.1986. Once the suit has been decreed, it is not open to the executing Court to go behind the decree and hold that the petitioner has not proved that he had a valid mortgage. This is the first error committed by the executing Court. Secondly, the executing Court non-suited the petitioner to execute the decree on the ground that there has been a *pendente lite* transaction by way of a sale deed and the transferee has not been impleaded in the proceedings and that no opportunity has been given to the transferee to establish that he is a bonafide transferee, having valid title for lawful consideration.

6.This Court, in *V.P.S.Viswanathan's case*, in similar circumstances, held that when a decree holder moves for execution of the decree by seeking attachment and sale of the immovable property belonging to the judgment debtor and the said property had been transferred by the judgment debtor,



this Court held that Section 53 of the Transfer of Property Act can be invoked, even if the judgment debtor attempted to alienate the property with an intention to defeat or delay a claim of the creditor and it is for the purchaser to show that he purchased the property in good faith and for valuable consideration to claim insulation and there was no requirement for the decree holder to file a separate suit to declare the transfer by the judgment debtor as a fraudulent transaction. I find that even in the said case, the transferee was not a party to the proceedings.

7.In *N.N.L.Ramaswami Chettiar's case*, the Full Bench of this Court held that even in a suit by an alienee, whose claim to property attached under a decree has been rejected, sought to set aside the order and establish his title, it would be open to the attaching creditor to plead in defence that the transfer was in fraud of creditors. Admittedly, in the present case, the transferee has not taken any steps to assert his right or protect his title.

8.In *Kallubandi Nanjamma's case*, this Court held that a creditor having a right to avoid a transaction under Section 53 can do so by any act



which shows clearly and unambiguously an intention to avoid it and it is well settled that the decree holder is entitled to avoid a transfer of property under Section 53, by electing to do so, by bringing the properties to sale in execution of his decree, then such avoidance enures to the benefit of an auction purchaser as well, notwithstanding that he is not himself a creditor or transferee. This Court has further held that not only a creditor, but also subsequent creditors will be entitled to avoid such fraudulent transfer.

9. In *T. Komati's case*, the this Court reiterated that the attaching creditor can avoid a transfer by merely applying for attachment and if the purchaser or the transferee makes a claim of the property, it is open to the attaching creditor to defend the said claim, contending that the transfer itself is fraudulent. In the light of the above, the findings of the executing court are clearly erroneous and against the well settled principles enunciated by this Court.

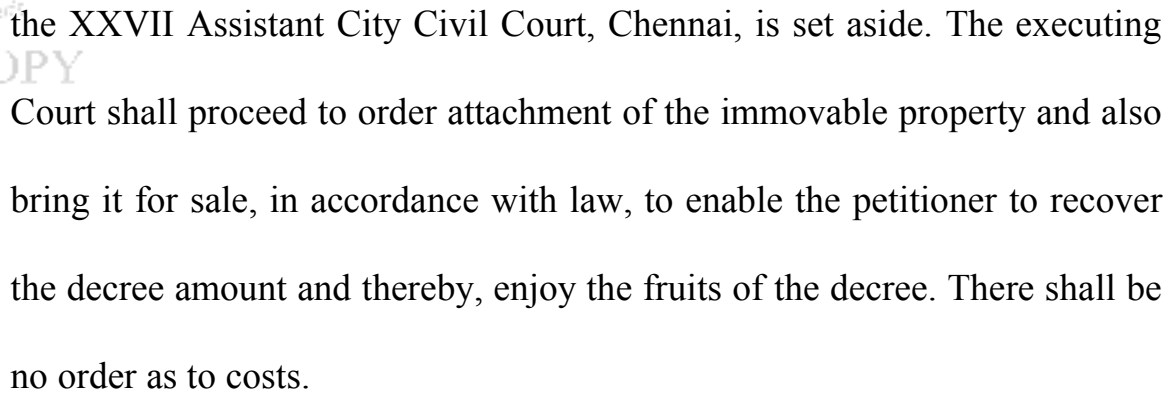
10. The petitioner, who has a valid decree and proceeds for execution, is entitled to avoid a transfer, which has been effected by the judgment



debtor, pending the lis. In fact, I have also noticed that originally the suit was filed before the Original Side of this Court and at that point of time, the judgment debtor was even served and entered appearance through counsel. However, subsequently, when the suit was transferred to the City Civil Court, on account of pecuniary jurisdiction of the City Civil Courts being enhanced, the respondent/judgment debtor did not choose to contest the suit.

11. In the light of the above, it is clear that the defendant had notice of the suit for recovery of money and therefore, it was clearly with an intention to defeat the claim of the decree holder that he has alienated the property in favour of third parties and as held by this Court repeatedly and consistently, the decree holder is entitled to avoid such transfer, which is admittedly only pending the suit for recovery of money. In the light of the above, I am inclined to set aside the order dismissing dated 08.08.2025 in E.P.No.2394 of 2016.

12. In fine, the Civil Revision Petition is allowed. The order dated 08.08.2025 in E.P.No.2394 of 2016 in O.S.No.9233 of 2010 on the file of



31.10.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To

The XXVII Assistant City Civil Court, Chennai.



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P.B. BALAJI,J.

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Pre-delivery order made in

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