



S.A.No.572 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	21.08.2025
<i>Pronounced on</i>	14.11.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.572 of 2019
and C.M.P.No.9599 of 2019

1.M.Ganesh
2.M.Gokula Krishnan

[Appellants 1 & 2 declared as major and their mother {Mala}/Natural guardian discharged from the guardianship vide order of Court dated 24.07.2025 made in C.M.P.No.17146 of 2025 in S.A.No.572 of 2019. [KGTJJ]

.. Appellants
versus

1.P.Allimuthu
2.A.Mahalingam

.. Respondents



S.A.No.572 of 2019

WEB COPY

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 22.12.2017 made in A.S.No. 41 of 2016 on the file of learned District Judge, Nilgiris, Udhagamandalam, confirming the fair and final order dated 02.09.2016 passed by the learned Subordinate Judge, Udhagamandalam, in E.A.No.43 of 2014 in E.P.No.23 of 2011 in O.S.No.37 of 2005.

For Appellants : Mr. L.Mouli

For Respondents : Mr.R.Vivekanandan

for Mr.R.Subramanian for R1

R2 No appearance

JUDGMENT

The second appeal is preferred against the judgment and decree dated 22.12.2017 passed by the learned District Judge, Nilgiris, Udhagamandalam, in A.S.No.41 of 2016, confirming the judgment and decree dated 02.09.2016 passed by the learned Subordinate Judge, Udhagamandalam, in E.A.No.43 of 2014 in E.P.No.23 of 2011 in O.S.No.37 of 2005.



S.A.No.572 of 2019

WEB COPY

2. The facts of the case is that the 1st respondent is the plaintiff filed the money suit in O.S.No.37 of 2005 before Sub Court, Nilgiri, against the 2nd respondent/defendant. The Suit was decreed with cost on 20.12.2005. Thereafter, the 1st respondent filed E.P.No.23 of 2011 for executing the decree, in order to realize the decretal amount by attaching the property of the judgment debtor in door no.2/16 Honnorai Village, Nilgiris in S.No.641/3B. In the said execution petition, attachment was ordered by the Executing Court. Thereafter, the appellants herein, who are the children of the 2nd respondent/judgement debtor filed an application in E.A.No.43 of 2014 under Order 21 Rule 58 of CPC in E.P.No.23 of 2011 for setting aside the order of attachment and to postpone the sale of suit property alleging that the property belongs to one Bellan who settled the property in favour of his mother Lakshmiammal on 20.05.2003 and the appellants are the grand children of Lakshmiammal and therefore, the property is not liable for attachment.



S.A.No.572 of 2019

WEB COPY

3. The 1st respondent/plaintiff /decree holder filed a counter opposing the same, stating that the suit property is in door No.2/16 and whereas, the property of Lakshmiammal is in door No.2/18A. The Executing Court, vide its order dated 02.09.2016, held that the appellants are the owners of the property in door No.2/18A and not in 2/16 and therefore, the objection raised by the appellants herein was overruled and dismissed E.A.No.43 of 2014.

4. The appellants filed the appeal suit in A.S.No.41 of 2016 before the District Nilgiris, Udthagamandalam. The First Appellate Court, vide judgement and decree dated 22.12.2017, confirmed the order passed by the Executing Court reiterating that the objectors are the owners of the property in door No.2/18 A and that the subject matter of attachment is in door no.2/16. Challenging the same, the present second appeal is filed.

5. The learned counsel appearing for the appellants would submit that the suit item No.1 of the schedule of the property belongs to the appellant



S.A.No.572 of 2019

WEB COPY

and the same cannot be subjected to attachment without considering the documents marked as Ex.P.1 to Ex.P3. He would further submit that the Courts below failed to consider the boundaries for the identification of property, since the subject matter of the petition mentioned property and the one which is sought to be sold are one and the same. He would further submit that Ex.X1 and Ex.X2 in item No.1 is assessed in the name of one Gandhi Ganesh and not in the name of judgment debtor. The Court below erred in holding that the appellants cannot obstruct the execution petition proceeding in respect of item No.1 of the property after holding that as per Ex.X2 assessment for door No.2/16 stands in the name of one Gandhi Ganesh. Hence, prayed for setting aside the judgment and decree passed by the First Appellate Court.

6. On the other hand, the learned counsel appearing for the 1st respondent/plaintiff/decreed holder submits that both the Courts below have



S.A.No.572 of 2019

WEB COPY

concurrently and factually held that the appellants have not established their right over the properties in door No.2/16 which belongs to the judgment debtor alone and the same has been rightly attached. He would further submit that the First Appellate Court as a final Court of fact has held that the settlement deed filed by the appellants pertains to door no.2/18A and that Ex.P.1 sale deed in the name of Bellan, who settled the property in favour of Lakshmiammal, on 20.05.2003 who in turn executed a settlement deed on 28.05.2003 in favour of her grand sons namely the appellants herein is in respect of door No.2/18A in S.No.641/3. The Village Panchayat President examined as P.W.2, through whom Exs.X.1 and X.2 marked, also deposed that door No.2/16 does not belong to the appellants herein but to the judgment debtor. His further contention is that there arises no substantial question of law to be answered in this second appeal and that the execution application filed by the appellants at the time of proclamation of sale on flimsy grounds was only with an intention to prolong the proceedings and



S.A.No.572 of 2019

WEB COPY

squat in the property. He would contend that the above execution application was filed only on the strength of the Ex.P.3 but which does not support the claim of the appellant and apart from Ex.P.3 there is nothing on record to show that item No.1 of the scheduled property belongs to the appellants and therefore, prayed for dismissal of the second appeal.

7.Heard on both sides and records perused.

8.The undisputed facts are that

(i)The 1st respondent/plaintiff/decreed holder obtained the money decree on 20.12.2005 in O.S.No.37/2005 against the 2nd respondent/defendant/judgment debtor. The 2ndrespondent/defendant/judgment debtor has not preferred any appeal against the said judgment and decree passed in O.S.No.37 of 2005 in favour of the 1st respondent/decreed holder. Since 2ndrespondent/defendant/judgment debtor failed to settle the decretal



S.A.No.572 of 2019

WEB COPY

amount the 1st respondent/ plaintiff/decree holder filed E.P.No.23 of 2011 for realization of decreetal amount by way of attachment and sale of the petition mentioned properties.

(ii). Pursuant to the said execution petition, attachment was ordered on 04.07.2012 by the Executing Court and when the same was posted for proclamation and sale, the appellants herein as obstructors have filed an application in E.A.No.43 of 2014 seeking to raise the attachment made in respect of item No.1 of the suit property.

9. It is also not in dispute that the appellants/obstructors are the sons of the 2nd respondent/judgment debtor. The appellants objected attachment and sale, only in respect of item No.1 of the schedule property measuring of 2 cents with a building in door No.2/16 situate in R.S.No.641/3B of Honnorai Village,Kothagiri.



S.A.No.572 of 2019

WEB COPY

10. According to the 1st respondent/plaintiff/decreed holder, the 1st item of the suit schedule property belongs to the second respondent/defendant/judgment debtor and the same has been proved in E.P.No.105 of 2006 by way of oral and documentary evidence. Where as the obstructors / appellants claimed title over the property under the settlement deed dated 20.05.2003 said to have been executed by one Bellan in favour of his mother Lakshmiammal who in turn settled the above property in favour of her grand sons the appellants herein is in door No.2/18A in S.No.641/3.

11. The Executing Court upon perusing Ex.P1 sale deed dated 15.09.1989, found that an extent of 0.2 cent vacant land in S.No.641/3 originally belongs to one Bellan who executed Ex.P.2 settlement deed on 20.05.2003 in favour of his mother Lakshmi Ammal, and the said lakshmi Ammal executed a settlement deed under Ex.P.3 on 28.05.2003 in favour of



S.A.No.572 of 2019

WEB COPY

her grand sons namely the appellants herein. Ex.X1 and Ex.X2 settlement deed and based on the evidence let in by P.W.2 the Executing Court held that E.xs.P.1 to P.3 are not in respect of the 1st item of the suit property and that it is in respect of door No.2/18A in S.No.641/3 whereas, the subject matter of attachment is in door No.2/16 and that the settlement deed in favour of the appellants/obstructors is only in respect of door No.2/18A and not for door No.2/16. Hence, the Executing Court rightly dismissed the execution application filed by the appellants herein. The first Appellate Court also confirmed the order passed by the Executing Court in E.A.No.43/2014. Since the appellants/obstructors failed to establish that the 1st item of the property belongs to them, the Executing Court and the first Appellate Court rightly held that the property which was subjected to attachment do not belong to the appellant herein. No perversity or infirmity are found in the orders passed by the Courts below which warrants interference by this Court.



S.A.No.572 of 2019

WEB COPY

12.In the result,

(i) the second appeal is dismissed. No costs.

(ii) the judgment and decree dated 22.12.2017 made in A.S.No. 41 of 2016 on the file of learned District Judge, Nilgiris, Udhagamandalam, confirming the judgement and decree dated 02.09.2016 passed by the learned Subordinate Judge, Udhagamandalam, in E.A.No.43 of 2014 in E.P.No.23 of 2011 in O.S.No.37 of 2005 is upheld. Consequently, connected miscellaneous petition is closed.

14.11.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The District Judge, Nilgiris, Udhagamandalam,
2. The Subordinate Judge, Udhagamandalam
- 3.The Section Officer, VR Section, High Court, Madras.



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S.A.No.572 of 2019

K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre- delivery judgment made in
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14.11.2025