



**W.A.(MD) No.310 of 2021**

**WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|--------------------------------|----------------------------------|
| 12.12.2024                     | 22.01.2025                       |

**CORAM:**

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN  
and  
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

**W.A.(MD) No.310 of 2021**

Senthil Murugan

... Appellant

-VS-

1.The Sub Registrar  
Ottapidaram  
Thoothukudi District

2.Selvakumar

2.Balamurugan

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 08.08.2019, passed in W.P.(MD) No.15252 of 2019, on the file of this Court.



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For Appellant : Mr.Ajmal Khan, Senior Counsel  
for M/s.Ajmal Associates

For Respondents : Mr.M.Sarangan  
Additional Government Pleader for R1  
*Ex parte* memo filed for R2  
Mr.S.Radhakrishnan for R3

### **J U D G M E N T**

**RMT.TEEKAA RAMAN, J.**

The unsuccessful writ petitioner is the appellant herein.

2. The second respondent is the owner of the petition mentioned property. He borrowed loan from the third respondent. Since the second respondent committed default in repaying the loan amount, the third respondent filed a suit before the Sub Court, Kovilpatti, in O.S.No.99 of 2019, seeking for recovery of the amount due to him. Pending suit, the third respondent moved I.A.No.217 of 2019 under Order III Rule 5 of the Code of Civil Procedure, wherein the learned Trial Judge has passed an order of attachment before judgment on 01.07.2019. Since the order of attachment before judgment is in force, the first respondent refused to register the document presented by the second respondent and the appellant / writ petitioner for registration.



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**3.** Mr.Ajmal Khan, learned Senior Counsel, appearing for the appellant would contend that an order of attachment only creates a charge over the property and it does not create a statutory bar to the registering authority, namely, the Sub Registrar, Ottapidaram, for registering the sale deed produced by the alleged judgment debtor.

**4.** On factual position of law, learned Senior Counsel would contend that while the sale deed in question was presented for registration on 28.06.2019, the order of attachment before judgment was passed only on 01.07.2019 and hence the Sub Registrar cannot refuse to register the sale deed.

**5.** The above contentions of the learned Senior Counsel for the appellant were not accepted by the learned Single Judge and by order dated 08.08.2019, the learned Single Judge has observed that the document was prepared on 27.06.2019 and submitted for registration on 28.06.2019 before the first respondent and an order of attachment was passed on 01.07.2019 by the learned Trial Judge. For attachment batta, the case was posted on 12.07.2019 and on that ground, the writ petition has been dismissed and hence this writ appeal.



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**6.** On 06.12.2024, this Court directed the learned Additional Government Pleader appearing for the first respondent to get instructions from the Sub Registrar, Ottapidaram, for marking the document as 'P' document on 28.06.2019, as to whether they have received any intimation from the Court or the individual and which has prompted them to mark the document as 'P' document.

**7.** Pursuant to the said direction, the learned Additional Government Pleader produced a copy of the pending document as well as a copy of the order of attachment before judgment passed by the Civil Court before this Court.

**8.** On perusal of the order passed by the learned Single Judge, we find that in the interlocutory application filed by the third respondent in I.A.No.217 of 2019 in O.S.No.99 of 2019, the learned Trial Judge has pronounced orders on 28.06.2019 and hence, the submissions made on behalf of the appellant are factually incorrect. From the order passed by the learned Trial Judge, which has been extracted by the learned Single Judge, the factual position of the case has also been made clear.



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**9.** It is the Civil Rules of Practice that before ordering attachment, the respondent in the application for attachment before judgment will be called upon to furnish security for the suit amount, failing which, order of attachment before judgment will be passed. Hence, we find that on 28.06.2019 itself, in the suit for recovery of money filed by the third respondent – Balamurugan, creditor, against the second respondent – Selvakumar, land owner, an order of attachment before judgment was in force.

**10.** In the sale deed presented for registration, there are two items of properties, one property is situated at Panchalankurichi Village, Ottapidaram Taluk and another property is situated at Vilathikulam Town and hence, the sale deed can be placed before any one of the Sub Registrars, namely, Ottapidaram Sub Registrar or Vilathikulam Sub Registrar, who is having jurisdiction.

**11.** The sale in respect of the property of the second respondent situated at Vilathikulam cannot be registered before the Sub Registrar, Ottapidaram and hence, the sale deed was received and pending document number was given by the Sub Registrar, Ottapidaram for verification of any encumbrance over the property.



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**12.** As per the papers produced by the learned Additional Government Pleader, on 28.06.2019, Friday, the document was presented for registration and a receipt was issued at 09.50 p.m., which clearly shows that after passing the order of attachment before judgment by the competent Civil Court, on 28.06.2019, in the late evening, the document appears to have been presented for registration. But, due to the diligent act of the Sub Registrar, Ottapidaram, the document was not registered, since one of the properties does not come under the jurisdiction of the Sub Registrar, Ottapidaram, and hence, pending document number was assigned. In such circumstances, the present writ petition was filed seeking a direction to the Sub Registrar, Ottapidaram, to register the sale deed and release the same.

**13.** Learned Senior Counsel appearing for the appellant relied upon the following decisions:

- (i) **S.Praveen Bohra vs. Joint-I Sub-Registrar, Office of Registration of Coimbatore**, reported in **2016-3-L.W. 513**.
- (ii) Order, dated 18.07.2022, passed in W.P.No.15009 of 2022 [**Indian Overseas Bank vs. M/s.TLS Tyres**].



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(iii) Order dated 16.07.2021, passed in W.P.(MD) No.8422  
of 2021 [***Palanivel vs. The Registrar, District  
Registrar's Office, Dindigul District***]

**14.** In all the above decisions, the common point that was decided is as to whether the order of attachment can be put as a bar to register a document.

**15.** It is crystal clear that it is well settled principle of law that the order of attachment cannot be a bar to register the document. Therefore, there is no need for the petitioner to file an appeal. The sale of the subject property, pending the order of attachment, is void only as against the claims enforceable under the order of said attachment and not in respect of the other claims. Therefore, the sale of the property attached cannot be construed as illegal sale.

**16.** Hence, the question of law is clear that as against the claim, which is the subject matter of the attachment before judgment, the sale deed is void. As against the other properties mentioned in the sale deed, it is not



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so. Hence, the Sub Registrar, Ottapidaram, is hereby directed to register the document, since the another property has not been attached by the Civil Court.

**17.** In respect of the claim of the third respondent over the suit property, the present sale deed is nothing but a void document and it is always open to him to realize the decree passed by the Civil Court.

**18.** Learned Additional Government Pleader appearing for the first respondent would also submit that the suit filed by the third respondent against the second respondent in O.S.No.99 of 2019 was decreed on 26.11.2019.

**19.** As observed in the above cited decisions, the sale deed in respect of the property that was attached is void and therefore, it is open to the third respondent to proceed as against the property *de hors* registration. Since the sale deed has one more property, the Sub Registrar, Ottapidaram, can register the document.



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**20.** It is to be noted that in respect of the property situated at Vilathikulam, the alleged sale deed executed by the second respondent in favour of the appellant is void as per the above cited decisions.

**21.** With the above observations, this writ appeal is disposed of.

No costs.

**[T.K.R., J.]                      [N.S., J.]**

**22.01.2025**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To:  
The Sub Registrar,  
Ottapidaram,  
Thoothukudi District.



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**RMT.TEEKAA RAMAN, J.**  
**AND**  
**N.SENTHILKUMAR, J.**

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**JUDGMENT**  
**IN**  
**W.A.(MD) No.310 of 2021**

**22.01.2025**