



C.R.P.(MD).No.612 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.612 of 2025

against

I.A.SR.No.3774 of 2004

in

O.S.No.189 of 2004

Sekar

.. Petitioner/Petitioner/1st Defendant

Vs.

Dawood Moideen [Died]

.. Respondent/Respondent/Plaintif

1.Chandrasekaran

2.Ravi

.. Respondents 2 & 3/ Respondents 2 & 3/
/ Defendants 2 & 3

Prayer: This civil revision petition has been filed under Article 227 of the Constitution of India to set aside the docket order in IA.SR.No. 3774/2004 in O.S.No.189 of 2004 on the file of learned District Munsif Court, Thanjavur dated 07.08.2024 with a direction to take on file the petition and to pass appropriate order.

For Petitioner : Mr.N.Balakrishnan



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ORDER

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The first defendant in O.S.No.189 of 2004 on the file of the learned District Munsif Court, Thanjavur has filed the present revision petition, challenging the docket order dated 07.08.2024, wherein the trial court has returned the application filed in I.A.SR.No. 3774 of 2004 for raising the order of attachment.

2. The present revision petitioner herein is the first defendant in the above said suit for recovery of money. Pending suit, the petitioner's property was attached, the suit was decreed on 21.04.2025 and, so far the money decree has not been put to execution.

3. It is the contention of the judgment-debtor that the money decree has become time barred and the same cannot be executed beyond a period of 12 years. In such circumstances, the attachment order of the judgment-debtor, which was communicated to the concerned Sub-Registrar Office, should be raised. With the said prayer, the above said IA was filed by the first defendant on 07.08.2024. The said application has been returned on the ground that unless the decree amount is realized, the order of attachment cannot be raised.



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4. It is further pointed out in the docket order that the first defendant has to file a separate suit for raising the order of attachment. Challenging the said return order, the present revision petition has been filed.

5. The facts narrated above would clearly indicate that the money decree dated 21.04.2005 has become time barred and the same cannot be executed by the decree-holders in O.S.No.189 of 2004. In such circumstances, the order of attachment before the judgment cannot be continued by the trial Court. The observations of the trial Court that unless the decree amount is realized, the attachment before the judgment order cannot be raised, is not legally sustainable.

6. In view of the fact that the decree has already become time barred and there is no possibility of putting the decree to execution. When the order of attachment before the judgment order has been passed by the trial Court, it is the duty of the same Court to raise order of attachment. Once it is found that the decree has become time barred, the



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WEB COPY

order of attachment is not legally sustainable and the same is set aside and the trial Court is directed to number the said application and pass order on merits.

7. Accordingly, this Civil Revision Petition is allowed. No costs.

03.03.2025

NCC : Yes/No

Index : Yes/No

Internet : Yes

nst

Note to Registry:- The order impugned in the Civil Revision Petition shall be returned to the learned counsel appearing for the petitioner on obtaining acknowledgement.

To

The
District Munsif Judge,
Thanjavur.



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R.VIJAYAKUMAR,J.

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