



C.R.P.(NPD)(MD)No.1630 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.1630 of 2023

and

C.M.P(MD)No.8007 of 2023

Periyasamy

...Petitioners/1st Respondent/Petitioner/Plaintiff

Vs.

1.Lakshmi

...1st Respondent/Petitioner/Third Party

2.S.Muruganandham

...2nd Respondent/2nd Respondent/
Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the Fair order and Decreetal order, dated 15.03.2023, passed in E.A.No.13 of 2018 in E.P.No.60 of 2018 in O.S.No.52 of 2010, on the file of the II Additional District & Sessions Judge, Thanjavur.

For Petitioner : Mr.B.Pragash

For Respondents : Mr.A.Senthil Kumar for R1
No appearance for R2



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ORDER

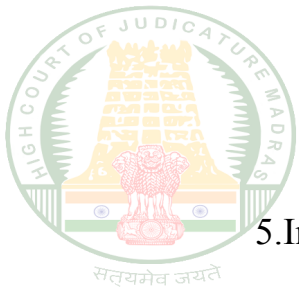
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The decree holder in O.S.No.52 of 2010, on the file of the II Additional District and Sessions Court, Thanjavur, is the revision petition herein.

2.The revision petitioner herein as plaintiff had filed the above said suit for the relief of recovery of money, based upon a pro-note. The suit was decreed on 07.02.2013. The decree holder had filed E.P.No.60 of 2018, to attach and bring the property for sale to reliae the decree amount.

3.Pending execution proceedings, the sister of the plaintiff had filed E.A.No.13 of 2018, under Order 21 Rule 58 of C.P.C. to raise the order of attachment.

4.According to the claim petitioner, the property is the joint family property in which the defendant will have 1/6 shares alone. She further claimed that she is entitled 1/6 shares in the suit schedule properties. The application was filed to raise the attachment with regard to 1/6 share of the claim petitioner.



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5. In the claim petition, it was contended that a suit for partition is pending between the parties in O.S.No.136 of 2018, on the file of the Principal Sub Court, Thanjavur. The executing Court had passed an order raising the order of attachment with regard to 5/6 shares and confirming the order of attachment with regard to 1/6 share of the defendant. Challenging the same, the decree holder has filed the present revision petition.

6. A perusal of the order passed by the executing Court reveals that since the claim petitioner had already filed a suit for partition, the Court had not adjudicated the share of the claim petitioner in the execution application. After arriving at a finding, the executing Court had partly allowed the claim petition by raising the attachment to the extent of 5/6 shares and confirming the attachment of 1/6 shares relating to the defendant in the suit.

7. The claim petition was filed by the first respondent in the revision petition only to raise the attachment of her 1/6 share. No other sharer had approached the executing Court to raise the order of attachment. Even if the executing Court feels that the claim petitioner is entitled 1/6 shares, order can be passed to raise the attachment only to the extent of 1/6 shares of the claim petition. The executing Court had erroneously raised the attachment of 5/6



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shares and confirmed 1/6 shares of the judgment debtor.

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8.In view of the deliberations, the order impugned in the revision petition is hereby set aside and it is modified as follows:-

a)E.A.No.13 of 2018 in E.P.No.60 of 2018 in O.S.No.52 of 2010 on the file of the Second Additional District and Sessions Court, Thanjavur, is partly modified to the effect that the order of attachment to an extent of 5/6 shares shall stand confirmed;

b)the order of attachment with regard to 1/6 share of the claim petitioner shall stand raised;

c)the executing Court is directed to proceed with the execution proceedings in accordance with law.

9.Accordingly, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

14.02.2025

Internet:Yes/No
Index:Yes/No
RJR

R.VIJAYAKUMAR, J.



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To

The II Additional District & Sessions Court, Thanjavur.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

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