



W.A.(MD)No.73 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.08.2025

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.73 of 2015
and
M.P.(MD)No.1 of 2015**

R.Thirukumar

... Appellant

Vs.

1.The Sub-Registrar,
Aruppukottai,
Virudhunagar District.

2.The Official Receiver,
Sub-Court,
Aruppukottai,
Virudhunagar District.

3.The Official Receiver,
District Court,
Srivilliputtur,
Virudhunagar District.

...Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act, to allow the appeal and set aside the order of the learned Judge of this Court in W.P.(MD)No.21485 of 2014 dated 06.01.2015.



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For Appellant : Mr.P.Vishnuvarathanan

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For Respondents : Mr.D.Sasikumar,
Addl. Government Pleader for R1.

JUDGMENT
(By G.R.SWAMINATHAN, J.)

The unsuccessful writ petitioner is the appellant before us. The appellant filed W.P.(MD)No.21485 of 2014 to delete the encumbrance made by the Official Receiver, Sub Court, Aruppukottai in the encumbrance register in respect of the petition mentioned property.

2.The appellant's father had lent monies to the owners of the petition mentioned property. Since they did not repay the same, his father filed O.S.No.73 of 1969 on the file of the Sub Court, Sivagangai. Money decree was obtained. Since the defendants did not come forward to satisfy the decree, E.P.No.9 of 1970 was filed and the petition mentioned property was brought to sale and purchased by the appellant's father. Sale deed was also executed in the year 1980 for the same. After the demise of the appellant's father, the revenue record reflected the names of the appellant and his siblings.



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3.The grievance of the appellant is that in respect of the said property, the creditors of the defendants in the suit had filed I.P.No.1 of 1970 on the file of the Sub Court, Sivagangai (re-numbered as I.P.No.14 of 1992 on the file of the Sub Court, Srivilliputhur). The said IP is said to be still pending. Whiles, the Official Receiver appointed by the Court in the year 2010 has sent a communication to the first respondent herein and the petition mentioned property had also been attached.

4.Seeking deletion of the said entry, the appellant had earlier filed W.P.(MD)No.13621 of 2013. The said writ petition was disposed of on 04.09.2014 in the following terms:-

2.Pursuant to an order passed by this Court, dated 05.08.2014, report has been filed by the Principal Sessions Judge, Virudhunagar District at Srivilliputhur, to this Court, by proceedings dated 28.08.2014, in which it has been stated that the Insolvency proceedings in I.P.No.1 of 1970 was filed on 01.04.1970 before the Subordinate Court, Sivagangai and an order was passed on 02.04.1971 and renumbered as I.P.No.14 of 1992 in the official Reserver Court, Virudhuangar District at



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Srivilliputhur and the matter is pending before the said Court and I.P.No.1 of 1970 has not been terminated and the final order has not been passed. It is also stated in the said report that at present, the Official Receiver post is vacant in Virudhunagar District.

3.In the light of the above stand, the proceedings has not attained finality in the legal sense. Therefore, liberty is given to the petitioner to approach the appropriate authority and produce sufficient records to show that the proceedings have been terminated and thereafter, approach the Sub Registrar for deletion of the entry. While the petitioner approaches the competent authority, the petitioner is entitled to produce a copy of the order, dated 20.04.2007, passed by the Subordinate Court, Aruppukottai and thereafter, pass an order to enable the petitioner to move the first respondent for deleting the entry.”

5.Without exhausting the remedy set out in the above mentioned terms, the appellant filed one more writ petition in W.P.(MD)No.21485 of 2014. The said writ petition was dismissed by the learned Single Judge on 06.01.2015 in the following terms:-

“6.On a plain reeding of the above order shows that by virtue of the order passed by this Court, on 05.08.2014, a report was called for from the Court concerned by proceedings dated 28.08.2014, in which it has been stated that the insolvency



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proceedings in I.P.No.1 of 1970 was filed, on 01.04.1970 before the Subordinate Court, Sivagangai and an order was passed on 02.04.1971 and renumbered as I.P.No.14 of 2014 in the Official Receiver Court, Virudhunagar District at Srivilliputhur and the matter was pending before the said Court and I.P.No.1 of 1970 has not been terminated and no final order has been passed.

7.This Court has also clearly stated in the earlier order that it is up to the petitioner to approach the authority concerned with relevant documents to show that the Insolvency Proceedings has been subsequently terminated and thereafter, permitted the petitioner to approach the Sub-Registrar for deletion of the entry. However, in the affidavit filed in support of the Writ Petition, the petitioner conveniently does not even say anything that when he had approached the authority concerned, when he has made representation in this regard and when the Insolvency Proceedings was terminated. Nothing has been mentioned in the affidavit. That is why, at the outset, I had to make a remark that this Writ Petition is a clear case of suppression of materials facts and abuse of process of Court. Further, as per the impugned order, in the encumbrance certificate, the attachment is made as per the order of the Official Receiver in the year 2011, much after the alleged insolvency proceedings dismissed for default. Further, this Court even as late in September 2014 on seeing the report, has stated that insolvency petition is pending till date. Therefore, the very filing of this Writ Petition, suppressing all the above facts, is totally wrong.”

Aggrieved by the same, this writ appeal has been filed.



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6.We are of the view that the appellant can get relief only by filing proper application before the Court where the insolvency petition is presently pending for raising the attachment. As and when such an application is filed, the same shall be disposed of by the Court concerned on merits and in accordance with law within a period of eight weeks thereafter.

7.With the aforesaid liberty to the appellant to approach the Insolvency Court, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (K.R.S. J.,)
25.08.2025

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

The Sub-Registrar,
Aruppukottai,
Virudhunagar District.

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