



C.R.P(NPD)(MD)No.2733 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.2733 of 2023

Subburaj

... Petitioner

Vs

1.Muthammal

Ramasamy died

2.Krishnaveni

3.Selvarani

4.Jeya

5.Valarmathy

... Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the order and decretal order dated 10.08.2023 passed in E.P.No.35 of 2017 by the Sub Judge, Tirumangalam.

For Petitioner : Mr.D.Malaichamy

For Respondents : Mr.N.Vallinayagam for R1 to R5



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C.R.P(NPD)/(MD)No.2733 of 2023

ORDER

This Civil Revision Petition is filed against the order and decretal order dated 10.08.2023 passed in E.P.No.35 of 2017 by the learned Sub Judge, Tirumangalam.

2. The facts in brief:

The suit in O.S.No.469 of 1997 was filed by the revision petitioner against the respondents seeking recovery of Rs.60,000/- and costs. Pending the suit, I.A.No.284 of 1997 was taken up by the revision petitioner under Order 38 Rule 5 of C.P.C., seeking order of attachment before judgment in the event of non-furnishing of security to the tune of Rs.60,000/-. In that application, notice was ordered to the respondents, they entered appearance and filed the counter affidavit. Before that, conditional order of attachment was passed on 10.07.1997. The suit property was attached on 19.07.1997, but Sub-Registrar could not be served due to want of survey number. After prolonged time, amendment petition was filed on 09.07.1999 and amendment was carried out. Again it was posted to various dates for payment of attachment batta. Finally,



C.R.P(NPD)(MD)No.2733 of 2023

Sub-Registrar was served on 17.10.2000. On 20.10.2000, suit was decreed and attachment was made absolute. The application was also closed.

3. To execute the decree, the revision petitioner filed E.P.No.35 of 2017 before the Execution Court to attach and sell the petition mentioned property belongs to the judgment debtors. Notice were served upon the respondents, they entered appearance and filed counter stating that the property mentioned in the execution petition was sold to one Rajagopal on 09.10.1998, through a registered sale deed. On the date of execution petition, the respondents were not owners. The Execution Court found that even though the property was attached before the judgment, the attachment order were served upon the Sub-Registrar concerned only on 20.10.2000, but the property was already sold to Rajagopal. On the date of execution petition, respondents were not owners and therefore, the property cannot be brought for sale.

4. Heard both sides.



C.R.P(NPD)/(MD)No.2733 of 2023

5. We will straight away go to the arguments advanced by the respondents herein, so that the matter can be appreciated in a proper manner. He would submit that the order of attachment was made on 19.07.1997. But, the property was sold on 09.10.1998. As per the amendment made by this Court in Order 38 Rule 11-B of C.P.C., the order of attachment must be communicated to the Sub-Registrar concerned. The date of communication to the Sub-Registrar concerned is the effective date of attachment for all purposes. The sale effected by him before serving the attachment order to the Sub-Registrar is not invalid under law and therefore, the sale made by them cannot be questioned. For that purpose, he would rely upon the judgment of this Court in ***Sri Krishna Chit Funds (Sattur Private Limited), Sattur Vs. R.S.Pillai and another*** reported in ***2000(2) CTC 524***.

6. No doubt, as per the judgment of this Court, the effective date can be construed only on the date of communication to the Sub-Registrar. But whether the sale, effected by the respondents herein after knowing the attachment order, will amount to fraudulent transaction is a matter to be considered in an appropriate manner, while entertaining the execution



C.R.P(NPD)(MD)No.2733 of 2023

petition, of course by impleading the purchaser.

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7. If this sort of defences are allowed to be taken, then the attachment order passed will become meaningless. The reason is that the attachment order was passed in the presence of respondents and not in an *ex parte* manner. It is the case of the respondents that they were not informed about the attachment order. Having known the attachment order, participated in the proceedings and having filed the counter, now they say that they have sold the property to Rajagopal. As mentioned above, it is a matter for consideration by the Execution Court that whether it will amount to fraudulent transaction or not by impleading the purchaser.

8. For that purpose, I am of the considered view that the matter can be remanded back to the Execution Court with a direction to the revision petitioner herein to implead the purchaser viz., Rajagopal as a party respondent.

9. With the above said direction and liberty, the matter is remanded



C.R.P(NPD)(MD)No.2733 of 2023

back and the parties shall appear before the Execution Court on receipt of notice. After restoration, the revision petitioner must file an application to implead the purchaser as a party. The Execution Court may proceed to decide the issue as to whether the sale effected by the respondents in favour of Rajagopal is a fraudulent one or not. Depending upon the outcome of the order, the parties are at liberty to work out their remedy.

10. With the above direction, this Civil Revision Petition is allowed and the order dated 10.08.2023 passed in E.P.No.35 of 2017 by the learned Sub Judge, Tirumangalam is set aside and the matter is remitted back to the Execution Court and the parties shall appear before the Execution Court on receipt of notice. No costs.

22.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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C.R.P(NPD)(MD)No.2733 of 2023

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To

- 1.The Sub Judge, Tirumangalam.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P(NPD)(MD)No.2733 of 2023

G.ILANGO VAN, J.

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C.R.P(NPD)(MD)No.2733 of 2023

22.01.2025