A.Nos.2286 & 3647 of 2023
in
E.P No.65 of 2022

MASTER
22.06.2026

COMMON ORDER

1. There are two applications filed by the applicant/3rd party. A.No.2286 of 2023 is filed to implead the applicant as a party/2nd respondent in the above execution petition. A.No.3647 of 2023 is filed to raise the attachment of the execution petition schedule mentioned property.

2. The applicant who is a third party states that the execution petition schedule mentioned property was purchased by him from the 2nd respondent/Judgment debtor by way of registered sale deed dated 28.05.2015 in Doc.No.2242/2015 before the SRO, Sembiam by paying total consideration of Rs.90,00,000/-. The applicant further stated that he is a bonafide purchaser of the execution petition schedule mentioned property enjoying absolute title of the schedule mentioned property from 28.05.2015. While so, he came to know about the order of attachment dated 01.02.2023, on 03.03.2023 when the Junior Bailiff of this court visited the schedule mentioned property to affix court notice of attachment for which he raised objection and also gave objection letter dated 03.03.2023, thereafter the Bailiff of this court left the premises without affixing any notice of attachment on the property. It is further submitted that despite his objection it appears that the 1st respondent/decree holder falsely represented before this court that the property had been attached on 03.03.2023 based on which this court had recorded that the property was attached and the case was adjourned for sale papers. No notice of attachment was ever affixed on the schedule mentioned property either on 03.03.2023 or subsequently because of the objection raised by the applicant and therefore the order dated 08.03.2023 passed by this court is erroneous, as the same has been passed in suppression of material facts. The schedule mentioned property was already transferred in the name of the applicant vide sale deed dated 28.05.2015 and therefore the main execution petition seeking for attachment and sale of the schedule mentioned property which does not belong to the 2nd respondent/Judgment debtor itself is not maintainable. Hence, the present applications to implead him as the 2nd respondent in the execution petition by recording his objections and allow the claim petition, consequently to raise the attachment of the schedule mentioned property.

3. The 1st respondent/decree holder has filed common counter stating that the applicant is acting on the instructions of the 2nd respondent/Judgment debtor who is none other than the brother of the applicant. The 1st respondent further stated that only after knowing about the passing of order dated 06.02.2015 by this court directing the 2nd respondent/Judgment debtor to furnish security in C.S No.85 of 2015 for an amount of Rs.45,00,000/- within a period of two weeks from the date of order, the applicant and the Judgment debtor/2nd respondent herein being brothers have created sham and nominal sale deed dated 28.05.2015 vide Document No.2042/2015 illegally with a view to disobey the orders of this court. Further, the 2nd respondent/Judgment debtor had not furnished the security in terms of order dated 06.02.2015 and so on failure to comply with the aforesaid order, the charge over the execution petition schedule mentioned property has been created automatically. Therefore, the purchase of the property by the applicant is illegal sham and nominal created only to defeat the rights of the 1st respondent/decree holder. The applicant is neither a necessary nor a proper party to be impleaded in the above execution petition. The order of attachment dated 01.02.2023 was properly effected in accordance with law after following the procedures by the Bailiff.

4. Heard both side counsels. The learned counsel for the applicant submitted that the execution petition has been filed for attachment and sale of immovable property for non satisfaction of the Judgment debtor /decree holder passed in C.S No.85 of 2015 which is a money suit and therefore, the execution petition schedule mentioned property was not a subject matter of the suit and so section 52 of the Transfer of Property Act 1882 is wholly in applicable to the present facts as there was no 'lis pendens' in relation to the schedule mentioned property and mere filing of the money suit does not automatically create any charge over the schedule mentioned property which is not the subject matter of the suit. Similarly, mere failure of the 2nd respondent/Judgment debtor to comply with the order of this court dated 06.02.2015 in C.S No.85 of 2015 to furnish security does not automatically create any charge over the said schedule mentioned property. The learned counsel further submitted that the applicant is a bonafide purchaser and his rights cannot be defeated in terms of Section 53 of the Transfer of Property Act as the applicant was in absolute possession and enjoyment of the property as its absolute owner since 28.05.2015. Yet another submission made by the learned counsel for the applicant/3rd party is that no notice of attachment was affixed on the schedule mentioned property in terms of Order 21, Rule 54 (2) which is a mandate under law. Therefore, the Order dated 08.03.2023 passed based on the false statement given by the 1st respondent/decree holder is invalid in terms of Order 21, Rule 54 of C.P.C. Therefore, the order of attachment is to be raised. In support of his contention the learned counsel for the applicant/3rd party relied on decision in **Gas Point Petroleum India Limited –Vs-- Rajendra Marothi (2023) 6 SCC 391**, wherein it is held that only the property of the Judgment debtor can be sold in auction in execution proceedings. The relevant portion of the aforesaid decision is extracted hereunder:

"***9***. *Even otherwise, it is required to be noted that the appellant herein purchased the property in question much before the auction of the property i.e., 31.08.1999. At the relevant time the property in question was not the subject matter of* *suit. As observed hereinabove, the subject matter of suit was specific performance of the L.P.G gas agreement and even the ad-interim injunction dated 18.05.1999 was also against the transfer of firm Ginni Enterprises to any other person and the defendants were directed to maintain status quo with respect to their firm Ginni Enterprises. Therefore, at the time when the property in question was put to auction on 18.10.2011 the appellant had already purchased the said property as far back as on 31.08.1999 as there was no injunction with respect to the said property while ad-interim injunction dated 18.05.1999 and as observed hereinabove, the property in question was not the subject matter of suit and the decree came to be passed on 30.09.1999 and the property was put to auction in the year 2011 for recovery of sum of Rs.2,38,450/- + Rs.23,500/- (sic). The ad-interim injunction dated 18.05.1999 cannot be pressed into service against the appellant. Therefore, the High Court has committed an error in considering injunction dated 18.05.1999 against the appellant. Therefore, at the time when the property was put to auction on 18.10.2011, the Judgment debtor was not the owner and therefore, the same could not have been put to auction. Under the circumstances, learned Executing Court erred in overruling the objections raised by the appellant against the auction/sale of the property which the appellant purchased much prior to the date of the auction i.e., on 31.08.1999."*

5. Similarly, the learned counsel relied the decision in **Sri Krishna Chit Funds --Vs-- R.S. Pillai, 2000 SCC Online Madras 336**, wherein it is held that **"*20.*** *......... All the above decisions would show that order of attachment made either prior to the Judgment or after the Judgment is to be communicated to the Judgment-debtor and the court has to fully comply with the conditions prescribed in the rules. Though there is no direct decision with regard to Madras amendment Order 21, Rule 58-A and Order 38, Rule 11-B C.P.C it is clear that in order to enforce an order of attachment, it is clear that all the conditions, procedures are to be fully complied with* *failing which, the order of attachment cannot be sustained."*

6. Per contra, the learned counsel for the 1st respondent/decree holder submitted that the applicant/3rd party and the 2nd respondent/Judgment debtor were well aware of the pendency of the suit and the order of the attachment before Judgment which was communicated by the decree holder to the Judgment debtor and the sale deed executed between the applicant and the 2nd respondent/Judgment debtor is contrary to the provisions of the Section 52 & 53 of the Transfer of Property Act and is void abinitio. The applicant is only a name lendor to circumvent the decree and defeat the rights and interest of the 1st respondent/decree holder.

7. On perusal of the entire case records, it is seen that the 1st respondent/decree holder has filed the above execution petition for execution of the decree dated 24.08.2018 passed in C.S No.85 of 2015 by way of attachment and sale of immovable properties morefully described in the schedule. Though, it is the contention of the 1st respondent/decree holder that the execution petition schedule mentioned property was attached before Judgment by an order dated 06.02.2015 in A.No.720 of 2015, the said order directs the Judgment debtor to furnish security for Rs.45,00,000/- within a period of two weeks from the date of order. It is seen that the copy of the registered sale deed dated 28.05.2015 in Document No.2042/2015 marked as Ex.A1 on the side of the applicant shows that title was conveyed on 28.05.2019. The attachment before judgment came to be ordered only on 03.10.2017. Thus, on the date of attachment, the execution schedule mentioned property did not stand in the name of the Judgment-debtor.

8.It is the case of the applicant/3rd party that he is a bona fide purchaser and even prior to the filing of suit in CS No.85 of 2015 and the alleged date of attachment before Judgment passed in A.No.720 of 2015, he had entered into an agreement of sale dated 20.08.2014 subsequent to which he entered into another agreement of sale on

01.10.2014 with the 2nd respondent/Judgment debtor who is his brother and has purchased the property by way of registered sale deed dated 28.05.2015 in Document No.2042/2015 by paying full consideration along with proper registration fee and stamp duty which could be seen from Ex.P1 certified copy of sale deed dated 28.05.2015.

9. This Court obliges to refer the latest decision of our Hon'ble High Court in **A.S.No.118 of 2025 and CMP Nos 2563 & 2566 of 2025 dated 14.03.2025 in 1.Gunaseelan and another Vs. 1.P.Perumal and 3 others** where in it is held that "*27. Therefore, this court is of the view that transfer of any property during the suit for money decree, such transfer can be attacked under Section 53 of Transfer of Property Act as a fraud on creditor. Whereas, doctrine of lis pendens will not apply. Therefore, the Judgment of this Court in Annakkili (cited supra) runs contra to the judgment of the Hon'ble Supreme Court in Samarendra Nath Sinha's case (cited supra), Judgment of Division Bench of this Court in Ponnuswami Pillai's case and a Single Bench of this Court in Ammavasai -Vs- Tulasikannu made in CMSA (MD) No.6 of 2008 dated 29.06.2017 has not laid the correct position of law. Be that as it may, the Trial Court applied the doctrine of lis pendens in favour of the first respondent namely the money decree holder instead of decree holder in a suit for specific performance. Since the suit is related to the enforcement of the contract in respect of immovable property lis pendens will apply even to involuntary sale (court auction sale), such approach of the Trial Court applying lis pendens doctrine to money decree is erroneous. Accordingly, this Court is of the view that as appellant has acquired title any subsequent sale is hit by doctrine of lis pendens. Appellant has better title than the first respondent. Therefore, the Trial Court allowing the application filed under Order XXI Rule 97 by the money decree holder is not maintainable and is liable to be dismissed. Execution Petition filed by the appellant for delivery of possession also cannot be maintainable since the appellant was put in possession in pursuant to the execution of sale in his favour by the*

Court and sale is much prior to the purchase made by the money decree holder."

10. Considering the fact that C.S No.85 of 2015 was filed by the decree holder for recovery of money which was decreed on 24.08.2018 and in view of the above judgment and relying upon the judgment quoted by the counsel for the applicant in **Gas Point Petroleum India Limited** cited supra, this Court is of considered opinion that mere relationship between the claimant and the judgment debtor cannot by itself be a ground to reject the claim in the absence of acceptable evidence establishing that the transaction is sham, nominal or fraudulent. The burden of proving fraud lies upon the decree holder who alleges that the sale transaction is done to defeat his rights. Here in the case on hand, except mere raising suspicion on account of relationship, no convincing evidence has been adduced by the 1st respondent/decree holder to establish the sale is hit by section 52 of the Transfer of Property Act.

11. In the present case the property in question has been transferred by way of registered sale deed to the applicant by the Judgment debtor long before the order of attachment passed in the execution petition dated 01.02.2023 and so the property could not have been attached in this execution petition. Further, perusal of Bailiff report dated 06.03.2023 it is seen that this applicant has raised his objection and also has given an objection letter dated 03.03.2023 enclosed with the Bailiff report stating that the applicant is the owner of the property and the Bailiff no where in his report has stated that despite the said objections he had affixed the copy of warrant of attachment on the schedule mentioned premises whereas the decree holder has falsely mislead the court as if the attachment was effected by the Bailiff which goes to show that the decree holder has not approached this court with clean hands.

12. Further, it is also seen from the records that the attachment before judgment was not reflected in the encumbrance records and there is no satisfactory material to show compliance with the requirements contemplated under O.38 R.7 r/w O.21 R54 of the Code of Civil Procedure regarding effecting and proclaiming the attachment order dated 03.10.2017 passed in A.No.720 of 2015. Similarly, the decree holder has also not produced sufficient proof to show that the above said procedures as contemplated under the aforesaid provisions of law is complied with for the attachment order dated 01.02.2023 in EP 65 of 2022. In view of the above said discussion and relying on the judgment quoted by the applicant in **Shri Krishna Chit Funds** cited supra, this court is of opinion that the decree holder failed to establish that the mandatory provisions regarding attachment of property was not followed in this case.

13. In view of the aforesaid discussion, this Court is of opinion that the applicant has established that he acquired title under Ex.A1 registered sale deed dated 28.05.2015 in Document No.2042 of 2015 before Sembium SRO prior to the order of attachment before Judgment dated 03.10.2017 and prior to the order of attachment dated 01.02.2023 in the execution petition and since the decree holder failed to prove that the transaction is sham or fraudulent, this court is satisfied that the applicant has an independent right and title over the property and so the property is not liable to attachment in the execution of the decree against Judgment debtor.

14. Since, this court has held that the property is not liable to attachment in this execution petition, it is not necessary to implead the applicant as a party to the execution petition as already this court has answered in affirmative to the relief of raising the attachment prayed by the applicant and the application u/o 21, Rule 58 has been adjudicated in favour of the applicant.

In fine, A.No.3647 of 2023 is allowed. The attachment of execution schedule mentioned property dated 01.02.2023 is hereby raised. The Registry is directed to communicate the same to the concerned Sub Registrar Office. No cost.

A.No.2286 of 2023 is accordingly dismissed. No cost.

MASTER