



S.A. No. 356 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2025
PRONOUNCED ON : 06.04.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

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V.N. Natarajan (Died)

2.N. Loganathan S/o. Late V. N. Natarajan,

3.N. Panneerselvam S/o. Late V.N. Natarajan,

A2 & A3 Are Residing At:
No.47, Ramamurthy Colony,
Chennai – 600082.

(Sole Appellant Died, A2 & A3 Are Brought On Record
As L.R.s Of The Deceased Sole Appellant Vide Court
Order Dated 24/01/2025 Made In C.M.P. Nos.22689,
22692 & 22691 Of 2023 In S.A. No. 356 Of 2014)

...Appellants

Vs.

1.A.Shajahan Sait

2.Kaja Mohideen

...Respondents

PRAYER: Second Appeal filed against the decree and Judgment in A.S. No. 310 of 2011 dated 31.08.2012 passed by the II Additional Judge, City Civil Court, Chennai dismissing the said appeal and thereby confirming the order and decretal order in E.A. No. 5619 of 2010 in E.P. No. 1526 of 2008 in O.S. No. 6601 of 2002 dated 29.06.2011 passed by the X Assistant Judge, City Civil Court, Chennai, allowing the said petition filed by the 1st



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respondent herein under Order 21 Rule 58 CPC R/W Section 151 CPC praying for adjudication of claim and to release the property from attachment in E.P. No. 1526 of 2008 and praying to set aside the same.

For Appellant : Mr.G.Saravanan, Advocate.

For Respondent: Mr.S.Kumaresan for R1, Advocate.
R2 – Notice Dispensed with.

J U D G M E N T

This Second Appeal is filed by the decree holder against the judgment and decree dated 31.08.2012 passed by the learned II Additional Judge , City Civil Court, Chennai in A.S. No. 310 of 2011, confirming the fair and decretal order dated 29.06.2011 made in E.A. No. 5619 of 2010 in E.P. No. 1526 of 2008 in O.S. No. 6601 of 2002.

2. For the sake of convenience, the parties in Execution Application No. 5619 of 2010 are hereafter referred to as follows: the applicant as “Claimant”, the 1st respondent as “Decree Holder”, and the 2nd respondent as “Judgment Debtor”.

3. The brief facts necessary for the disposal of this appeal are as follows: The Decree Holder instituted O.S. No. 6601 of 2002 on 31.12.2002 against the Judgment Debtor for recovery of Rs.2,96,000/- with interest at



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24% and costs. The suit was decreed ex parte on 21.04.2003. On the strength of the ex parte decree, the Decree Holder filed E.P. No. 1952 of 2003 seeking attachment and sale of the petition schedule property, viz., undivided half share in the vacant land in Door No. 14-B, Chamiers Road, Teynampet, comprised in R.S. No. 3880/5 (part), as per patta R.S. No. 3880/53, in Teynampet Village, bounded on the North by Achiah Plot, South by Shoba Devi property, East by Abdul Salam house and ground, and West by Ganesapuram Lane, measuring an extent of 1800 sq.ft., within the Registration District of Central and Sub-Registration District of Central Madras (hereinafter referred to as “the property”). In the said execution petition, an order of attachment was passed on 02.04.2004. The attachment was effected on 27.04.2004 and entry in Book I was made in the office of the Sub-Registrar on 29.04.2004.

4. In E.P. No. 1952 of 2003, the Claimant filed E.A. No. 173 of 2005 to raise the attachment. Simultaneously, the Judgment Debtor filed an application to set aside the ex parte decree along with I.A. No. 7249 of 2004 to condone the delay. The said I.A. No. 7249 of 2004 was dismissed for default on 03.12.2004. Thereafter, the Judgment Debtor filed I.A. No. 1529 of 2005 to restore I.A. No. 7249 of 2004 and I.A. No. 1530 of 2005 to stay



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execution proceedings. Both applications were allowed on 10.02.2005. The Decree Holder filed C.R.P. Nos. 1059 and 1060 of 2005 against the said order. This Court, by order dated 12.10.2006, set aside the ex parte decree on condition that the Judgment Debtor should deposit 50% of the decreed amount. Pursuant thereto, the Judgment Debtor deposited Rs.2,56,710/- on 30.11.2006, and the suit was restored. Consequently, the ex parte decree was set aside, the execution petition and claim application were closed, and the attachment dated 27.04.2004 was raised on 20.12.2006, with corresponding entry in Book I.

5. After restoration of the suit, the defendant again defaulted, and consequently, the trial Court passed an ex parte decree for the second time on 11.01.2007. The Decree Holder thereafter filed E.P. No. 1526 of 2008 for realization of the decree amount after adjusting Rs.2,56,710/-. In this execution petition, attachment was again ordered and affixture was made. The Claimant filed the present claim petition E.A. No. 5619 of 2010 to raise the attachment.



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6.The Claimant claims title under Ex. P1 sale deed dated 06.05.2004 purchased from the Judgment Debtor and others. He contends that he is a bona fide purchaser for value without notice, having verified encumbrance certificates which did not disclose attachment. He further claims ignorance of proceedings until affixture, and states that he had earlier compromised with the Decree Holder by paying Rs.2,40,000/-, pursuant to which the earlier attachment was raised. He alleges suppression of facts in the present attachment and seeks release of the property.

7.The Decree Holder contends that the purchase dated 06.05.2004 is subsequent to attachment and hence void. He alleges collusion and states that the Claimant is a name-lender. He further contends that private transfer after attachment is void under Section 64 of CPC and seeks dismissal of the claim petition.

8.Before the Executing Court, the Claimant examined himself as P.W.1 and marked Exs.P1 to P12; Exs.R1 to R4 were marked in cross-examination. No oral evidence was adduced by the Decree Holder.



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9.The Executing Court held that the Claimant is a bona fide purchaser and allowed the claim petition. The appeal filed in A.S. No. 310 of 2011 was dismissed, confirming the order.

10.Aggrieved, the present Second Appeal is preferred by Decree Holder. The Second Appeal is admitted on the following substantial question of law:

“Whether the Courts below were right in concluding that the sale in favour of the first respondent would prevail over the attachment, more so when the sale was made during the subsistence of attachment ordered pending suit?”

11.The learned counsel for the decree holder would assail the concurrent orders contending that the claim petition ought not to have been allowed. It is urged that the claimant is not a bona fide purchaser for value, that the claim has been laid in collusion with the judgment debtor, and that such collusion is evident even from the sale consideration recited in Ex. P1. It is further contended that Exs.P3, P7 and P11 do not relate to the subject property, that there are material discrepancies in the property descriptions between Ex. P1 and the other documents, and that the claimant has thereby played fraud to secure release from attachment; reliance is also placed on the



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cross-examination of P.W.1 to submit that the claimant has not approached the Court with clean hands. The appellant would further submit that the claimant resides next door and was aware of the attachment, and that any private alienation after attachment is void, hence the claim petition ought to have been dismissed. It is lastly contended that the First Appellate Court failed to render an independent finding and that the Courts below erred in casting the burden on the appellant to prove that the claimant is not a bona fide purchaser, whereas the burden lies on the claimant in a petition under Order XXI Rule 58 CPC.

12.The learned counsel for the claimant contended that the 1st respondent purchased the schedule property on 06.05.2004 under Document No.534/2004, SRO-I, Chennai District, Central, for valuable consideration, after obtaining and verifying the Encumbrance Certificates, which, according to him, did not disclose any court attachment and hence he is a bona fide purchaser without notice of litigation. It is further submitted that in the earlier execution E.P. No.1952 of 2003, the claimant had contested the proceedings and entered into a compromise with the decree holder and paid Rs.2,40,000/-, pursuant to which the attachment was raised and the said execution petition was dismissed on 20.12.2006, and thereafter the claimant became absolute



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owner and even created security in favour of Corporation Bank for loan. It is also urged that when a fresh attachment was sought in E.P. No.1526 of 2008, an order of attachment stated to have been made on 23.07.2009, the decree holder proceeded without impleading/noticing the claimant though fully aware of the earlier compromise and closure of the previous EP, and that the only defence projected is alleged mismatch in boundaries. Reliance is placed on the reasoning of the executing Court that the attachment was not reflected in the claimant's encumbrance certificates and that the decree holder failed to prove any manipulation or take steps to cancel the sale deed; it is therefore prayed that the Second Appeal be dismissed and the concurrent orders be confirmed.

13. Here and Now, the issue is whether the sale in favour of the Claimant can prevail over subsisting attachment. Ex. R2 reveals that attachment entry was made on 29.04.2004 and continued till 20.12.2006. The Claimant purchased the property on 06.05.2004 during the subsistence of attachment.

14. The Claimant relies on Exs. P3, P7, and P11, which are encumbrance certificates. Ex. P3 covers the period from 15.07.1983 to 29.08.2004 and was obtained on 30.06.2004. Ex. P7 covers the period from

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01.01.1994 to 19.03.2006 and was obtained on 20.03.2007. Both these documents were obtained subsequent to the purchase and are therefore irrelevant, as the Claimant had not verified them prior to the purchase to ascertain the existence of any attachment.

15. Ex. P11 covers the period from 10.08.2001 to 04.04.2004 and was obtained on 05.04.2004. This is the only encumbrance certificate obtained prior to the sale dated 06.05.2004. The Claimant purchased the property nearly one month after obtaining Ex. P11. In the interregnum period, an attachment entry was made on 29.04.2004. Hence, the contention of the Claimant that he had verified the encumbrance prior to the purchase, acted bona fide, and proceeded to purchase the property is wholly incorrect.

16. There are discrepancies in property descriptions in Exs. P3, P7, and P11. The rider clause in EC indicates that incorrect property description may omit entries. The Claimant had knowledge of attachment as he filed E.A. No. 173 of 2005 on 11.07.2005. The plea of compromise is unsupported. His conduct shows purchase with knowledge of attachment.

17. Exs. R1 and R2 clearly disclose attachment and its subsequent raising. The burden lies on the Claimant to prove bona fide purchase. He



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failed to establish that Encumbrance Certificates relate to the same property.

Under Section 64 CPC, any private transfer after attachment is void against claims enforceable under attachment. Hence, the sale deed is void.

18. Mortgage created by the Claimant does not improve his position. The findings of the Courts below are vitiated by improper appreciation of evidence and misapplication of burden of proof.

19. For all the above reasons, the concurrent finding of the Courts below that the claimant is a bona fide purchaser, arrived at principally on the basis of EC non-reflection, without verifying whether the claimant's Encumbrance Certificates correspond to the suit schedule property and without appreciating Exs.R1 and R2 disclosing court attachment, is vitiated and cannot be sustained. Consequently, the sale in favour of the claimant cannot be held to prevail over the attachment; it can operate only subject to the decree holder's enforceable rights under the attachment in terms of Section 64 CPC, and the substantial question of law is answered in favour of the appellant/decreed holder.

20. In the light of the foregoing discussion, this Second Appeal stands allowed. The judgment and decree dated 31.08.2012 made in A.S. No.310 of 2011 are set aside, and consequently, the fair and decretal order dated 10/12



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29.06.2011 made in E.A. No.5619 of 2010 in E.P. No.1526 of 2008 in O.S.

No.6601 of 2002 is also set aside.

21. Accordingly, E.A. No.5619 of 2010 stands dismissed, and the Executing Court is directed to proceed with E.P. No.1526 of 2008 in accordance with law for realisation of the decree amount by proceeding against the attached property. In the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions, if any, are closed.

06.04.2026

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

1. The II Additional Judge,
City Civil Court,
Chennai.

2. The X Assistant Judge,
City Civil Court,
Chennai.

3. The Section Officer,
V.R. Section,
High Court Of Madras,
Chennai.

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DR. A.D. MARIA CLETE, J

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