BEFORE THE ADDITIONAL LABOUR COURT, COIMBATORE

***Present:* *Thiru.K. Arunachalam, M.A.* M.L.,**
Presiding Officer,
Additional Labour Court,
Coimbatore

Monday, the 5th of December, 2022

E.A. No.1/2019
in
E.P. No.52/2018
(CNR No.TNCB-04-000213-2018)

1. M/s. VSP Property Promoters

   Rep. By its Partners

2. Mr.S. Venkateshan

   S/o. Srinivasan

   Door No.598, Raja Street,

   Coimbatore-641 001.

3. Mr.V. Palanisamy

   S/o. Velusamy Gounder

   Door No.598, Raja Street,

   Coimbatore-641 001.

4. Mr.G. Shanmuganathan

   S/o. N. Gnanasambantham

   Door No.598, Raja Street,

   Coimbatore-641 001.

5. T.R. Kumar Marappasamy

S/o. T.M. Ramasamy,

Door No.598, Raja Street,

Coimbatore-641 001. …… Petitioners/Claimants

~ Versus ~

1. Mr.K. Balasubramaniam, ……. 1st Respondent/Worker

S/o. Kuppuraj,

No.12/88, Vinayagar Kovil Street,

Kuniamuthur,

Coimbatore-641 008.

2. M/s.R.S.L. Industries Ltd.

Sethur House, No.28, Dr. Alagappa Road,

Chennai-641 084.

3. M/s. R.S.L. Textiles (India) Ltd.,

Door No.59, Palakkad Main Road,

Kuniyamuthur, Coimbatore-641 008. …..Respondents 2 and 3 /

Management

This Application came up for final hearing before me on 23.11.2022 in the presence of Thiru.Panchapakesan, Learned advocate for the petitioners and Thiru.M. Bhuvaneswaran, learned advocate for the 2nd and 3rd Respondent/Management and upon perusing the petition, counter statement, additional counter statement, documents and upon hearing the arguments of both side and having stood over for consideration, till this date, this court doth passed the following:-

ORDER

1. The petitioners prays this court to raise the order of attachment of the property in Coimbatore Registration District, Joint-II Sub-Registration district Coimbatore South Taluk, Kuniamuthur Village, S.F. No.298 to an extent of 5.43 acres together with trees with usual right of way, easements and other appurtenances attached thereto and right to water in the well in S.F. No.298 and 266/1 and pass such other orders, as may be just and necessary in the circumstances of the case and render justice.

2. **The amended petition averments in brief are as follows :**

The claim petition is filed by the petitioners/claimants under Order 21 Rule 58 r/w. Sec.151 of Civil Procedure Code. The schedule property consists of one item. The schedule of property has an extent of 5.4 acres together with trees with usual right of way, easements and other appurtenances attached thereto and right to water in the well of S.F. No.298 and 266/1 of Kuniyamuthur Village. The 1st petitioner is a partnership firm. The 2nd and 5th petitioners are the partners of the 1st petitioner concern. The E.P. has been filed by the 1st respondent, seeking execution of certain money decree passed against the 2nd respondent. The execution is sought for attachment and sale of EP schedule property. The EP schedule property in which S.F. Nos.298 and 266/1 of Kuniamuthur Village does not belong to the 2nd respondent management on which the 1st respondent decree holder is an employee. The property belonged to the petitioners, which was purchased from RSL Property Development Limited. The petitioners purchased the property long before the EP came to be filed on various dates. Further, the 1st respondent has sought to bring the property belonging to the petitioners herein for sale in execution of a decree, which they have secured against the 2nd respondent. There is no connection whatsoever between the petitioners and the 2nd respondent. In the circumstances, when the order of this Court attaching the property came to the knowledge of the petitioners. Hence, they filed this petition.

Further, the 2nd respondent was amalgamated with a company namely Vijayalakshmi Mills Ltd., during the year 1997 and the same was ordered and approved by the Hon'ble High Court of Madras in C.P. Nos.211 and 212 of 1997, in which the schedule of property does not reflect the S.F. No.298 and 266/1 in Kuniamuthur Village, which now belongs to the petitioners herein, which emphasis the schedule of property does not belong to the 2nd respondent. To prove this the ownership certificate issued by the Thasildar , Coimbatore South, which reflects the survey numbers of the 2nd respondent is submitted by the petitioners in which the S.F. No.298 and 266/1 do not belong to the 2nd respondent.

Further the 2nd respondent is in liquidation and the 1st respondent has failed to frame the liquidator as a party to this proceedings, who is now incharge of the 2nd respondent company. Based on the sale deed in favour of the 1st petitioner firm and the order of the Hon'ble High Court of Madras reflected the ownership certificate issued by the Tahsildar, Coimbatore South in favour of the 2nd respondent, which will prove the schedule property is nowhere connected with the 2nd respondent and also the 1st respondent has no right to enforce his claim against the 1st petitioner's property. Hence, unless the said schedule property is raised, the petitioners will be put to much hardship and irreparable loss. Therefore, it is prayed to raise the order of attachment of the property.

3. **The averments in the counter of the 1st respondent in brief are as follows :**

The E.A preferred by the Petitioners/Third Parties/Purchasers is a vexatious move to delay the process of the E.P. and it is to be rejected in toto.

The 1st respondent does not admit the averments, save those admitted. Without prejudice to the above stand, the E.A. petitioners did not come forward with true facts of the case and it is nothing but their collusive move with the second and the third respondents to stall the final move of this respondent and other co-workers to realize their legal dues. The E.A Petitioners are not bonafide purchasers as the facts are showing different faces of this move.

The E.A. Petitioners have submitted that they have purchased landed property from the one M/s. R.S.L.Property Development Ltd, to an extent of 5.43 acres spreading over in S.F.No.298 as defined in the schedule of property. They also stated in E.A.No. 34/2015 of E.P.No. 132/2013 that there was only attachment by ESIC Authorities and the said attachment was also to be raised as the said authorities took necessary process to that effect, and they could get the documents from the Registrar's Office only between 23.05.2013 and 24.06.2013. These averments of so-called purchases and belated receipt of original documents from the Registrar office are nothing but fictitious and make believe stories developed by the petitioners/3rd parties/purchasers, make illegal gains at the cost of this respondent and co-workers. Even their claim of purchases of properties under S.F. No.298 through a power agent is also fictitious as there is no legal sanctity for such assignment. The averments that they came to know about the attachment only when they sought for the encumbrance certificate are also nothing but crocodile tears to make such illegal gains. The so called purchases of the scheduled properties, as stated above, are fictitious as the alleged very registration was said to be done only in the belated stage, even according to their own documents and the same is a make believe story, only to defeat the interest of this respondent and his co-workers.

The respondent attached the said properties under the impression that it is still owned by this 3rd respondent, when the property was purchased by the E. A. petitioners when there was no attachment or impediment for such purchase. They also pleaded for raising attachment of the said property, as ordered by this Court on 1.4.2013. The above said averments are nothing but tissues of rank falsehood and this respondent totally deny and dispute the versions of the EA. petitioners as they did not come forward with clean hands.

Further, this respondent and other co-workers have filed batch of Computation Petitions under C.P. 181/2005, 297/2007, C.P. 114/2014, C.P.185/2005, C.P.533 to 533/2004, 539/2004, C.P.627, 651/2004, 17 to 22/2005, 130,131/2006 and the 2nd batch of Computation Petitions under C.P.222/2008, 169/2006 47/2013, 164/2006, 28/2009, 167/2006, 171/2006, 166/2006, 170/2006, 19/2009, 17/2009, 15/2009, 18/2009, 16/2009, 12/2009, 14/2009, 13/2009, 168/2006 and 443/2006 apart from the present C.P.Nos.18/2013, 23/2009, 109/2015, 25/2009, 45/2013, 24/2009, 27/2009, 22/2009, 21/2009, 59/2013, 62/2013, 61/2013, 57/2013, 58/2013, 56/2013, 55/2013, 60/2013, 26/2009 and 68/2013 inclusive of the above respondents CP.

which is finally at the stage of above EP. to get their legal entitlements computed, for difference periods. The 3rd respondent did not come forward to honour the orders of this Court in all the above cases till this date, though it sell off the entire machineries and the total building materials after demolishing the entire buildings in the above said properties. When there was an attempt by the 3rd respondent to sell off the machineries, the Hon'ble High Court of Madras passed an order dated 21.6.2004 under W.P.M.P.No.14010/2004 and W.V.M.P.No.853/2004 and W.P.11918/2004 directing the 3rd respondent to deposit a sum of Rs.13 Lakhs for the retirement reliefs entitled to 11 workers, among the co-workers, from the sale proceeds of the machineries. Though the machineries of the 3rd respondent's mills were sold out, they purposefully violated the order of the Hon'ble High Court, by not reserving the said amount in a separate account, which was again reiterated by the Hon'ble High Court of Madras, in an observation in the order given by it, in W.P.No.4618/2005 and W.P.M.P.5120/2005, which was filed by one of the co- workers to speed up the trial of the C.P. filed by the co-workers, which now stand in the position of execution proceedings. Not even a single paise has been given to the workers.

Further it was learnt that the 3rd respondent was attempting to sell off the mills properties, to defeat the interests of this respondent and other co-workers, there was an advertisement given on behalf of workers, by the worker's union called Thamizhaga Panchalai Thozhilalar Sangam on 25.6.2007 itself vide a Tamil daily Newspaper called Maalaimalar, to warn and caution the likely purchasers of the 3rd respondent properties. Not only that, the 3rd respondent has not paid the statutory and legal dues to the authorities like EPF, ESIC and Commercial Tax department under Government of Tamil nadu. It seems that only with respect to E.S.I.C., the respondent has paid the dues and accordingly their attachment was raised as per information given by ESI office dated 17.12.2013. But the attachment with respect to EP.F. is pending ever since 2002 and as per their claim, the 3 respondent has still owe a sum of Rs.63,17,441/-as penal damages and Rs.3,56,396/- penal interest for the period 07/93 to 07/99 and 01/2000 to 01/2003 till 26.12.2013 and their attachment is still in vogue on the properties inclusive of the so called rights claimed by the E.A. petitioners in S.F.No.266/3, 265/28 and 298. Similarly, the 3rd respondent has to pay a sum of Rs.2,97,40,311/- to the Commercial Tax department till 19.12.2013 inclusive of tax arrears and penal interest over the said tax arrears and their attachment is also still in vogue from 2006 onwards. The said attachments are reflected in the Encumbrance certificates, with respect to the properties of the 3rd respondent, inclusive of properties under S.F.No.266/3 and 265/2B. Therefore, the E.A. petitioners cannot claim innocence of such attachments. When they knew pretty well about the attachment and raising of such attachment by ESI.C. even when the encumbrance certificates also reflect the attachment of E.P.F and Commercial Tax dept. They wanted to suppress the true facts to achieve illegal gains and they cannot be allowed to misuse the legal process initiated by this respondent.

Further, M/s. R.S.L.Property Development Ltd, who allegedly sold the property is none other than one S.Ramasamy S/o.R.M.Sethuraman, who is the Managing Director of the 3rd respondent mills. In fact, the E.A petitioners and the 3rd respondent and M/s. R.S.L.Property Development Ltd have collusively acted together to defeat the interest of this respondent and other co-workers and hence they came forward with this present E.A. as a dilatory tactic and move. Further, similar kinds of cases filed by this E.A. petitioners against the co-workers of the 1st respondent before this Court, seeking the same prayers which are all dismissed by this Court by considering the said facts. All the averments contained in the E.A. petition are all denied as false and incorrect. Therefore, it is prayed to dismiss the E.A. petition filed by the petitioners.

4. The 2nd and 3rd respondents were set-exparte.

5. i) The earlier E.A. No.55/2014 was dismissed on 15.05.2018 by this court. Aggrieved over the same, the claimant preferred W.P. No.32758/2019 dated 14.02.2019 before the Hon'ble High Court of Madras. The matter was remitted back to this court to try afresh by order dated 09.03.2020. The parties were granted liberty to produce oral and documentary evidence. Accordingly, a denovo enquiry was conducted in this case.

ii) The petitioners/claimants represented by its partner namely Mr. Venkatesan and he was examined as PW-1 to prove his claim and Ex P-1 to Ex P-16 were marked. The learned counsel for the petitioner had filed memo dated 19.04.2022 stating to adopt the evidence given by the IOB Manger Thiru.Vishnu K. Dass as PW-2 in E.A.No.52/2015 in EP No.168/2013 as PW-2 evidence in this case also to prove the passing of payments through cheques and RTGS and accordingly Ex P-17 is adopted. Subsequently, as per endorsement, the evidence given in E.A. No.52/2015 in E.P. No.168/2013 may be treated as petitioner side evidence. Therefore, Ex P-18 to Ex P-21 marked during recall evidence of PW1 Mr. Venkatesan in E.A. No.52/2015 in E.P. No.168/2013 also adopted in this case as Ex P-18 to Ex P-21. Likewise, the documents marked through RW-1 in E.A.No.52/2015 in E.P.No.168/2013 are adopted as Ex R-1 to Ex R-4 in this case also, as per memo dated 27.10.2022 of the learned counsel for the responent. Accordingly, Ex R-1 to Ex R-4 were adopted in this case.

6. Following points were taken up for consideration for effective adjudication of the dispute involved:

(i) Whether the petitioners are bonafide purchasers of the scheduled property?

(ii) Whether the claim is duly proved?

(iii) What are the reliefs the parties are entitled to?

7. Points:

7.1) Heard both sides and records perused.

7.2) The claim petition is filed in respect of the items lying in S.F. No.298 and 266/1 of Kuniamuthur Village. The claimant is M/s. VSP Property Promoters. The said firm is represented by 4 partners. The 1st partner namely Mr.S. Venkateshan is examined as PW-1 to speak of his claim. Ex P-2 is a Partnership Deed dated 05.03.2008 under which M/s. VSP Property Promoters came to be germinated. The same was learnt to be registered under the Registrar of Firms on the date of 24.07.2009. Ex P-1 is the acknowledgement given by the Registrar of Firms. The petitioners claim to have purchased some property under 3 sale deeds. The first sale deed marked as Ex P-11 was executed on 10.04.2008. Ex P-13 is the sale deed executed on the date of 10.04.2011. Ex P-12 sale deed was executed on the date of 14.11.2011. The petitioners claim to be the bonafide purchasers of the entire property. Ex P-11 sale deed of 3.43 acres of land in SF No.298. Ex. P-12 pertains to 2 acres of land in SF No. 298. Ex.P-13 pertains to 2.37 acres of land in SF no. 266/1. Accordingly, the petitioners claim to have purchased a total extent of 7.80 acres of vacant land lying in Kuniyamuthur Village.

7.3) The 1st respondent is learnt to be the worker in the mills namely M/s. Vijayalakshmi Mills Ltd. The said mill owns 15 acres of land, according to the petitioner. The said mill got renamed as RSL Industries Ltd., by virtue of merger, according to him. The financial condition of the mill management went bad and the workers were left with wage arrears. Consequently, the 1st respondent is learnt to have filed C.P. No.296/2007. The same was learnt to have been awarded in favour of the 1st respondent worker. Consequently he filed E.P.No.52/2018 seeking execution as against the 3rd and 4th respondents, who were arrayed as M/s. RSL Industries Ltd., and M/s. RSL Textiles (India) Ltd. The 1st respondent sought for attachment in respect of various items including the items lying in S.F. No.298 and 266/1 of Kuniamuthur Village. The attachment was learnt to be effected by this court on 01.04.2013 in the execution proceedings. Subsequently the property was brought to sale under Ex R-13 sale notice. S.F. No.298 and 266/1 item would also form part of the schedule property stated in Ex R-13 Sale Notice. Later on, all the items including S.F. No.298 and 266/1 were brought for sale by way of court auction. The auction purchaser namely Samy Property Developers represented by its partner Dhandapani successfully bidded the property under court auction dated 16.09.2019. During the pendency of confirmation of sale, the claim petition is learnt to be filed by the present petitioners.

7.4) The case of the petitioners is that they purchased the property as early as in the year 2008 and 2011 and that neither attachable interest nor saleable interest existed in the years 2013 and 2019 respectively. The petitioners would claim that the property was duly purchased by them from M/s.

RSL Property Development Ltd., for a valid sale consideration. Per contra, the learned counsel for the 1st respondent would vehemently argue that the sale was fictitious and nominal and they intended to defraud the dues payable by the workers of M/s. RSL Management. In other words, it is argued that the petitioners' firm collusively purchased the property without any sale consideration with the only intention to defraud the decree holders. It is pertinent to note that M/s. RSL Industries Ltd., which was earlier known as Vijayalakshmi Textiles ran into financial debts without paying the wages of the mill labourers. A cluster of computation petitions vide C.P. Nos.185/2005, C.P.533 to 538/2004, 539/2004, C.P.627, 651/2004, 17 to 22/2005, 130, 131/2006 and the 2nd batch of Computation Petitions under C.P.222/2008, 169/2006 47/2013, 164/2006, 28/2009, 167/2006, 171/2006, 166/2006, 170/2006, 19/2009, 17/2009, 15/2009, 18/2009, 16/2009, 12/2009, 14/2009, 13/2009, 168/2006 and 443/2006 apart from the present C.P.Nos.18/2013, 23/2009, 109/2015, 25/2009, 45/2013, 24/2009, 27/2009, 22/2009, 21/2009, 59/2013, 62/2013, 61/2013, 57/2013, 58/2013, 56/2013, 55/2013, 60/2013, 26/2009 and 68/2013 were filed by the mill labourers and the awards were passed in their favour. Ex R-1 is one such award dated 19.07.2012 in CP No.296/2007 in favour of the 1st respondent worker. Accordingly, the petitioners wage arrears were computed to the tune of Rs.83,700/-.E.P. No.52/2018 came to be filed to realize the computational award passed in

Ex R-1. The petitioners would claim that they have paid due sale consideration in favour of M/s. RSL Property Development Ltd. The items of 3.43 acres were sold away for a sale consideration of Rs.64,30,000/- under Ex P-11. The recital would state that a cash amount of Rs.30 Lakhs was paid in advance and a cheque bearing Rs.34,30,000/- was issued in favour of M/s. RSL Property Development Ltd. Similarly a sale consideration of Rs.60 Lakhs was claimed to be paid in Ex P-12 sale deed. The amounts were paid by way of two separate RTGS payments worth Rs.30 Lakhs each. The sale was concluded on 14.11.2011. Similarly, the petitioners paid a sale consideration of Rs.45 Lakhs under Ex P-13 sale deed under cheque dated 12.09.2008. The sale got concluded on 10.11.2011. The petitioner would rely upon Ex P-17 bank records relating to Indian Overseas Bank to prove the passing of sale consideration. The petitioner is learnt to be the account holder of the said bank. PW-2 Vishnu K. Dass is the Bank Manager of Indian Overseas Bank, Oppanakara Street Branch, Coimbatore. The banker would categorically speak of passing of cheques as well as payments made under RTGS. The said transactions are not seriously disputed by the respondents. The petitioner would argue that the companies were never created as shell companies as alleged and the certificate of incorporation of the 2nd and 3rd respondents as well as M/s. RSL Property Development Ltd., would go to show that they were created in different periods between the years 1983 to 1995. Ex P-18 is the certificate of incorporation issued on 03.09.1992 in the name of M/s. RSL Textiles (India) Ltd., (3rd respondent herein). Ex P-19 is the certificate of incorporation dated 09.03.1983 standing in the name of M/s. RSL Industries Ltd., who is the 2nd respondent herein. Ex P-20 is the certificate of incorporation dated 22.06.1995 standing in the name of M/s. RSL Property Development Ltd., under whom the petitioners claim to have purchased the items. Ex P-21 is the online copy of Patta No.205 of Kuniamuthur Village which would go to show that the properties openly stood in the name of M/s. RSL Property Development Ltd. Hence it is the specific case of the petitioners that the sale was originally intended upon and the purchase was purely genuine by paying necessary sale consideration and that no saleable right existed in favour of the 2nd or 3rd petitioners or any third person and that the property was mistakenly attached assuming wrong ownership as against the 2nd and 3rd respondents herein.

7.5) The learned counsel for the claimants would argue that the date of execution of sale deed is crucial and that the belated attachment will create no legitimate charge over the property and that the consequent sale based on the impugned attachment is a nullity.

7.6) He would further argue that under Sec.64 of Civil Procedure Code, the transfer or delivery of property attached in favour of the third person is void only as against all claimants enforceable in the said attachment. Otherwise, it is not void generally. Hence, the sum and substance of the petitioners' claim is that the title holds good and that the attachment effected by the court followed by the auction sale is to be declared as null and void.

7.7) The 1st respondent and court auction purchaser are unanimous in attacking the title claimed by the petitioner. They would contend that the connected power deeds and board resolution permitting one Ramasamy to act as a signatory in the sale deed were not produced for open reasons.

7.8) The learned counsel for the 1st respondent would vehemently submit that ESI dues by way of attachments were clandestinely cleared by M/s. RSL Industries Ltd., which would categorically establish the collusive sale made during the year 2013. They would further argue that the status of the petitioners remain unchanged and no vendors were examined to prove his title and the claim petition was belatedly filed after nearly two years from the date of knowledge of attachment and the sale deed was fraudulently executed by ignoring the paper publication Maalai Malar daily and necessary articles of association and memorandum of association relating to the said companies were not filed and the stoic silence maintained by the 2nd and 3rd respondents by remaining ex parte would speak of the collusive terms relating in germination of sham and nominal sale deeds. Ex P-11 is the sale deed to be considered at the first instance. The seller M/s. RSL Property Development Ltd., is represented by authorized signatory cum director Mr.S. Ramasamy. He is learnt to have derived power under the resolution passed on 05.03.2008 in the board of directors meeting. The 1st respondent would submit that the resolution copy was not produced before this Court and that Mr.Ramasamy signed in the capacity of the director under the caption “vendor” during the month of April 2008 ambiguously. Similarly, Ex P-12 sale deed and Ex P-13 sale deed were signed by the power agent namely Mr.S. Rajendran on behalf of M/s. RSL Property Development Ltd., during the month of November 2011. The non-production of resolution copy as well as the power deed copy would create doubt over the genuineness of the sale, according to the 1st respondent. The non-examination of vendors is also another ground of the attack made by 1st respondent. It has to be remembered that necessary sale considerations were paid by the petitioner in favour of M/s. RSL Property Development Ltd. Ex P-17 bank papers would go to show that the payments were made by way of cheques as well as through two RTGS payments. Apart from that, a cash advance of Rs.30 Lakhs was learnt to be paid by the petitioner under Ex P-11 sale deed during the year 2008. The sale consideration is considerably high and the same got paid to M/s. RSL Property Development Ltd at different points of time. Hence, the court cannot doubt the genuineness of execution of sale by any count.

7.9) Further the court is of the considered view that the board resolution as well as the power deeds relating to M/s. RSL Property Development Ltd., are to be held only as an internal affair within the company. It has got nothing to do with the current dispute of alleged fraudulent sale. Hence the board resolution standing in the name of Mr.Ramasamy and power deeds standing in the name of Rajendran are not supposed to be vital documents for adjudication of the claim. Those irregularities fall within the domain of the members or directors of the company. In the considered opinion of this court, a third party cannot question the same which is categorically curable. Accordingly the court hereby holds that the 1st respondent and the court auction purchaser can have no locus standi to question the alleged irregularities stated to have been committed in the context of the case.

7.10) Further, M/s. RSL Property Development Ltd., was incorporated even as early as in the year 1995 under Ex P-20 Certificate of Incorporation, well before a decade. If the entity came into existence closer to the disputed period, it would have to be watched with greater care and caution to throw away the element of fraud. Further the said Ramasamy is the husband of the 1st director namely Angamai stated in Ex P-20 incorporation certificate. Hence, it is quite clear that Mr.Ramasamy was in active affairs in respect of M/s. RSL Property Development Ltd. The earlier title is also clearly traced back in Ex P-6 to Ex P-10 sale deeds executed in the year 1997. Mrs.Surya Kumari is the vendor of M/s. RSL Property Development Ltd., during the year 1997 and she is none other than the granddaughter of Mrs.Indrani, who is the close associate family member of erstwhile Vijayalakshmi Mills.

7.11) The 1st respondent has not chosen to attack the title of the 2nd and 3rd respondent directly. It is also seen from the records that M/s. RSL Property Development Ltd., is a separate legal entity vide. Ex P-20, Certificate of Incorporation created as early as in the year 1995, governed by three directors. Ex P-21 Revenue Patta would also go to show that the title and possession remained open to the public in the name of M/s. RSL Property Development Ltd. Ex P-14 is the ownership certificate issued in the name of M/s. RSL Property Development Ltd., by Tahsildar, Coimbatore (South). It would also clearly exclude the items lying in S.F. No.298 and 266, which was claimed to be purchased by M/s. RSL Property Development Ltd.

7.12) Meanwhile, SARFAESI proceedings were learnt to be taken by the State Bank of India against the properties of M/s. RSL Industries Ltd., and its allied company. It would also exclude M/s. RSL Property Development Ltd., and its items indicate the fact that M/s. RSL Property Development Ltd., was a separate independent entity. Further, it has to be remembered that out of 15 acres, only half of the items were claimed to be purchased by the petitioners from M/s. RSL Property Development Ltd., under Ex P-11 to Ex P-13. The defrauded sale backed up by sham documents would not normally miss all the available properties included in the sham documents. In our case, the claim of genuine sale is well settled by valid sale consideration and passing of title in Ex P-11 to Ex P-13. Hence, the court is not hesitant to hold that the petitioners are bonafide purchasers of the items lying in S.F. No.298 and 266/1 part of Kuniamuthur village.

7.13) It has to be incidentally seen that a secured credit loan was given by State Bank of India as against M/s. RSL Industries Ltd., and M/s. RSL Textiles (India) Ltd. The banker is also learnt to have taken legal action before the Debt Recovery Tribunal in O.A. No.52/2003 claiming a sum of Rs.46 crores and above. It would categorically exclude the disputed claim items found herein. Totally 15 acres lying in other survey nos., are found to be scheduled towards the credit loan. If the sale was found to be sham and nominal and if M/s. RSL Property Development Ltd., was a shell company, the debtors would have mortgaged the said items to get the enhanced loan by including the same. Hence, the SARFAESI proceedings taken by the Banker excluding the claim items herein, would also prove the point that the impugned sale was genuine. It is rather important to note that ESI dues were cleared by the 2nd and 3rd respondents on the date of 31.03.2008, letter issued by the ESI authorities. The court is not really concerned with the clearance of ESI dues. Ex P-11 was executed only on 10.04.2008. By the time, the ESI dues got cleared. The court cannot think adversely merely because ESI attachments were raised in the name of R-2 and R-3. The court also sees the issue in a different angle. The petitioner might have insisted the seller to clear ESI dues as a precondition to purchase the property. Hence, it might be an arrangement made by M/s. RSL Property

Development Ltd., to clear off the dues. Any prudent purchaser will like to see the encumbrance cleared before proceeding with the purchase. The corresponding dates and events would give a clear hint to the fact that the sale would in all probability be genuine. No element of fraud seems to exist over the entire transactions on the cards. Hence the execution of Ex P-11 followed by Ex P-12 and Ex P-13 is held duly proved before this court.

7.14) Further, it has to be squarely considered that a distress sale too comes out of the financial crisis. Here the petitioners have also paid a huge sum of money by way of sale consideration and got executed Ex P-11 to Ex P-13 in their favour. The ranging of dates is an open secret towards a genuine deal before getting culminated into sale under three different sale deeds, marked as Ex P-11 to Ex P-13.

7.15) Considering the entire scenario involved in the entire transaction, the court is well convinced of the fact that the petitioners intended to purchase the property from M/s. RSL Property Development Ltd. The examination of vendors is quite not necessary, since the dispute is narrowed down only with the main plea of no sale consideration, unsuccessfully. Here the 2nd and 3rd respondents M/s. RSL Management remained exparte for obvious reasons, since they have no subject interest. M/s. RSL Property Development Ltd., cannot be considered to be a necessary party, since they have sold away the impugned scheduled items in favour of the petitioners and the sale deeds were proved by establishing the payment of adequate sale consideration. A mere paper publication in Maalai Malar during the year 2007 cannot be taken to be constructive notice as against the entire public. Further the paper publication is not claimed to be made against the actual seller namely M/s. RSL Property Development Ltd. In the considered circumstances, the genuinity of the petitioners cannot be looked with an eye of suspicion over the impugned purchase by any stretch of imagination.

7.16) The ruling of the Hon'ble High Court, Madurai Bench reported in W.P. No.12507/2011 dated 23.11.2011, M/s. Vishnuvardhan Paper Mills (P) Ltd., Vs. 1. Tamil Nadu Electricity Board and 2 others would highlight the point that the corporate veil needs to be lifted, since the same persons are behind all entities in respect of realization of arrears dues to the TNEB.

7.17) Similarly the fraudulent transfer executed by the defendant in favour of the son is held to be hit by Sec.53 of the Property Act, by relying upon the ruling of the Hon'ble High Court of Madras reported in 2010 (5) CTC-580 – 1. S. Ravikumar and 2 others Vs. 1. R.M. Manivasagam and two others.

7.18) In our case, the court has already held that the sale was duly supported by valid consideration and M/s. RSL Property Development Ltd., was an independent entity. Hence, the actual fact is entirely different from the rulings, since the private alienation is involved between the third parties.

7.19) The learned counsel for the petitioner would submit that Sec.64 of CPC is not applicable to the case on hand, since the attachment is posterior only to the sale of property. The supporting ruling is CDJ 2006 MHC 1899 – 2006 (5) CTC 245 of the Hon'ble High Court of Madras – Pinna Thevar Vs. M.S. Maniam and another.

7.20) Similarly, the vendee would get right from the date of execution of sale deeds and the date of registration is only a formality and those rights are protected under Order 38 rule 10 r/w. Sec.47 of the Registration Act. The said point is highlighted by the Hon'ble Supreme Court of India reported in CDJ 1990 SC 739, dated 07.11.1990 - Hamda Ammal Vs. Avadiappa Pathar and others.

7.21) The Hon'ble High Court of Madras also highlights the point that the Court is bound to verify the property and its status by calling for records from the revenue department, if needed. Atleast, the status can be checked by verifying the encumbrance certificate. In the absence of verification, the court is not supposed to attach the property before judgment, which may lead to fraudulent acts. The ruling is reported in CDJ 2002 MHC 4167, dated 18.07.2022 – Senthil Vs. Rajamani and another.

7.22) The Hon'ble Supreme Court of India has categorically held in Balwant Rai Saluja & Anr V/s Air India Limited & Others reported in 2014

(9) SCC 407 that “piercing the veil" would seek the remedy by a wrong done by the persons controlling the company. The same is available only in restricted cases and in limited circumstances. It is done only to deduct perpetuation of fraud or to avoid the liability.

7.23) Likewise, if the limit proceedings would be sufficient to satisfy the claim of the decree holder, then only such portion of the property should be sold by the court. It is an obligation imposed upon the court. The sale without examining this aspect and not in conformity would be illegal. The said point is highlighted in Ambati Narasavya Vs. M. Subba Rao by the Hon’ble Supreme Court of India reported in AIR 1989 Supp. (2) 693.

7.24) Further the attachment is merely a private alienation of the property to the prejudice of claims enforceable under the attachment and it does not provide a transfer by operation of law, such as an involuntary sale by decree of Court or enforced execution. The said point is highlighted by Hon’ble High Court of Andhra Pradesh reported in AIR 1965 AP 52, dated 04.01.1963 – Mutha Subbarao and others Vs. The official receiver, West…

7.25) The ruling rendered by Khiarajmal Vs. Daim in 1976 (2) MLJ 365 was relied upon by the learned counsel for the petitioners to highlight the point that the court has no jurisdiction to sell the property of the person, who is not properly on record. Consequently the aggrieved party can collaterally challenge the sale as nullity, since it has no saleable interest in the property. The same is reported in CDJ 1975 MHC 420, dated 26.09.1975 – Chandrappa Govinda Mudali Vs. Govindaswami.

7.26) The debtor has a disposing power over the properties over the properties or their profits, which power he may exercise for his own benefit. The said point is highlighted by the Hon'ble High Court of Madras reported in 1937 (1) MLJ 249, dated 14.12.1936 – Kuppan Chettiar & others Vs. Masa Goundan and others.

7.27) Likewise, if an order of attachment is passed by DRT is in force, the sale need not be held void, since transfer or delivery of the item attached is void only, as against the claims enforceable under the said attachment, otherwise it is not void generally - as ruled by the Hon'ble High court of Madras in CDJ 2013 MHC 2305 between KDP Properties Pvt. Ltd., rep. by its Chairman Vs. The Sub Registrar, Madurai and another.

7.28) In our case, the earlier attachment by EPF and others cannot infringe upon the sale executed by M/s. RSL Property Development Ltd., in favour of the petitioners. Only the sale is enforceable as against all the earlier attachment. Likewise, lifting the corporate veil is not required in our case, since there was no intent of fraud over the execution of sale deed for the reasons stated supra. Further in our case, it is categorically held that the attachment debtor has no saleable interest over the property. In the considered circumstances, no attachment can be made by the court over the concluded sale. So, considering the points highlighted by the Hon'ble High Courts and Hon'ble Supreme Court of India, the point is quite clear that the attachment was effected by the court subsequent to the impugned sale is to be termed as void in the eyes of law.

7.29). The petitioners have also sought for setting aside the court auction sale dated 16.09.2019 vide EA.No.3/2019 separately. The petitioner would submit that Ex R-13 court sale notice was vague in respect of description of property. He would further submit that the property lacks details of subdivision numbers, boundaries, separate extents, individual valuation in the execution petition and that the court sale is consequently to be held null and void. The petitioner would state that the property comprising 37 acres lying in survey no. 300,301(2), 266(3),298 are grossly undervalued at Rs. 10 Crore and property was purchased in court auction for a paltry sum of Rs.9,60,80,000/- by the Court Auction purchaser. It is the case of the petitioner that the sale was hit by excess execution and that a portion of the property would have been sufficient to realize the award amount of Rs.83,700/-. The same is seriously resisted by 1st respondent. It is pertinent to note that a substantial portion of the entire property was also mortgaged by the 2nd and 3rd respondents with the State Bank of India for Rs.46 Crores and above. The banker is learnt to have filed OA 50/2003 before the Debt. Recovery Tribunal and the same was ordered in favour of the banker on 10.07.2017. A recovery certificate was also learnt to be issued. The debt was later on assigned to Assets Reconstruction Company India Ltd. as per records. A separate claim petition is also found to be pending vide EA No.5/2020 filed by the said Assets Reconstruction Company India Ltd. in our case. The banker's claim comprises 15 Acres 89.5 cents lying in SF.No.111,300/1, 301,302/2,302/3,302/4,303/2 and 303/3 of Kuniyamuthur Village. The proceedings in EA 5/2020 is represented to be stayed by the Hon'ble High Court of Madras in WMP.NO.8305/2021. Hence the court is of the considered view that it would be premature to comment about the court auction sale as well as of the secured claim at this stage. The merits of EA.5/2020 and 3/2019 have to be decided separately considering the larger items involved along with the disputed property in the current instance. At this juncture, the court is well convinced of the fact that the grounds for raising the attachment order is clearly made out in favour of the petitioner/ 3rd party purchaser.

7.30) Accordingly, the court hereby holds that the court attachment dated 01.04.2013 needs to be raised in the order of justice. Consequently the claim made in S.F. No.298 and 266/1 of Kuniamuthur Village is liable to be allowed in the interest of justice. These points are answered accordingly.

8.) **In the result,** the claim stands allowed. The attachmentdated 01.04.2013 in S.F. No.298 and 266/1 of Kuniamuthur Village, Coimbatore is ordered to be raised. There is no order as to costs.

(Dictated to the Steno-Typist, transcribed and computerized by her, then corrected and pronounced by me on this the 5th day of December, 2022)

K ARUNACHALAM

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Date: 2022.12.21 17:31:03 +0530

PRESIDING OFFICER,
ADDITIONAL LABOUR COURT,
COIMBATORE

I) **<u>LIST OF WITNESSES EXAMINED</u>**

For petitioners side	:	PW-1:	Thiru.S. Venkatesan
		PW-2:	Thiru.Vishnu K. Dass, Manager Indian Overseas Bank (Examined as PW-2 in E.A.No.52/2015 in E.P.No.168/2013 treated as PW-2 evidence in this case also as per Memo of the learned counsel for the petitioner dated 19.04.2022)
For respondent's side	:	Nil	

II) EXHIBITS MARKED - (On the side of Petitioner)			
Exhibit No.	**Date**	**Description**	
Ex P-1	24.07.2009	Acknowledgement of Registration of Firm	Xerox-Copy
Ex P-2	05.03.2008	Partnership Deed	Xerox-Copy
Ex P-3	06.12.1968	Sale Deed Document No.450/1969 executed in the name of Suryakumari	Xerox-Copy
Ex P-4	19.05.1969	Sale Deed Document No.2000/1969 executed in the name of Suryakumari	Xerox-Copy
Ex P-5	06.12.1968	Dhana Settlement executed in the name of Sujatha (Document No.692/1997)	Xerox-Copy
Ex P-6	11.03.1997	Sale Deed executed by Suryakumar in the name of RSL Property Development Ltd., (Document No.730/1997)	Xerox-Copy
Ex P-7	12.03.1997	Sale Deed executed by Suryakumar in the name of RSL Property Development Ltd., (Document No.730/1997)	Xerox-Copy
Ex P-8	13.03.1997	Sale Deed executed by Suryakumar in the name of RSL Property Development Ltd., (Document No.757/1997)	Xerox-Copy
Ex P-9	03.03.1997	Sale Deed executed by Suryakumar in the name of RSL Property Development Ltd., (Document No.571/1997)	Xerox-Copy

Ex P-10	08.01.1997	Sale Deed executed by Suryakumar in the name of RSL Property Development Ltd., (Document No.49/1997)	Xerox-Copy
Ex P-11	10.04.2008	Sale Deed executed by RSL Property Development Ltd., to the petitioners (Document No.1733/2008)	Xerox-Copy
Ex P-12	14.11.2011	Sale Deed executed by RSL Property Development Ltd., to the petitioners (Document No.2836/2013)	Xerox-Copy
Ex P-13	10.11.2011	Sale Deed executed by RSL Property Development Ltd., to the petitioners (Document No.2342/2013)	Xerox-Copy
Ex P-14	06.07.1998	Ownership certificate issued in the name of M/s. RSL Property Development Ltd., by Tahsildar, Coimbatore	Xerox-Copy
Ex P-15	–	O.A.No.50/2003 before the Debts Recovery Tribunal, Coimbatore	Office Copy
Ex P-16	–	Schedule of Property	Xerox-Copy

Note: (PW-1 examined and Ex P-1 to Ex P-16 marked. As per memo of the learned counsel of the petitioner dated 19.04.2022, PW-2 evidence given in E.A. No.52/2015 in E.P.No.168/2013 is treated as PW-2 evidence in this case also and accordingly Ex P-17 was adopted in this case and likewise Ex P-18 to Ex P-21 marked through PW-1 recall evidence in

E.A. No.52/2015 in E.P.No.168/2013 is adopted as Ex P-18 to Ex P-21 in this case, as per endorsement dated 05.09.2022)

III) LIST OF EXHIBITS (On the side of the Respondent)

LIST OF EXHIBITS			
Exhibit No.	**Date**	**Description**	
Ex.R.1	31.10.2008	Order/Award in C.P.No.443/2006	Xerox-Copy
Ex.R.2	20.03.2015	78 pages Encumbrance Certificate for 20 years	Xerox-Copy
Ex.R.3	-	Encumbarance Certificate (Enclosed with Sale paper) in Serial No.6 and 8	Xerox-Copy
Ex.R.4	12.11.2018	Order copy of this Petition	Xerox-Copy

Note: (The learned counsel for the 1st respondent/petitioner/worker filed memo on 27.10.2022 to adopt the evidence of E.A.No.52/2015 in E.P. No.168/2013 in this case also. Hence, Ex R-1 to Ex R-4 adopted in this case. In E.A.No.52/2015 in E.P.No.168/2013 - 4th Respondent Thiru.K. Dhandapani, Auction Purchaser examined as RW-2 and through him Exhibits R-5 to Ex R-16 marked in E.A.No.52/2015 in E.P.No.168/2013)

K ARUNACHALAM

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Date: 2022.12.21 17:31:15 +0530

PRESIDING OFFICER,
ADDITIONAL LABOUR COURT,
COIMBATORE

COPY OF ORDER
IN
E.A. No.1/2019
in
E.P. No.52/2018
Dated: 05.12.2022
Additional Labour Court,
Coimbatore