

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE
OF KANCHEEPURAM AT CHENGALPATTU
In the Presence of: Tmt.N.VASANTHALEELA, B.Com., L.L.M.,
PRINCIPAL DISTRICT JUDGE**

Date: Monday, the 22nd day of February 2021

E.A.No.86 of 2017 in E.P.No.27 of 2012

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| 1. Mr.S.Madhusudhanan | |
| 2. Mr.N.Abirami | Petitioners/3rd Parties |
| /Vs/ | |
| 1. Mr.R.Ramasamy | Respondent/DH |
| 2. M/s. Land Marvel Homes,
Rep. by its Managing Partner | |
| 3. Mr.M.Veerashekar | |
| 4. Mr.M.Arivazhagan | Respondents/JDs |

By petition dated 17.01.2017, U/o. 21 Rule 58, R/w. Sec. 47 and 151 of CPC and Rule 143 of CRP., the petitioners pray to raise the attachment in respect of the petition mentioned 'B' Schedule property.

This petition came up on the 12th day of February 2021 for final hearing before me in the presence of M/s. R.Sugumar, Advocates for the petitioners/3rd parties, and of M/s. M.Anandeeswaran, Advocates for the 1st respondent/Decree Holder, and that the respondents/Judgment Debtors were being called absent and set exparte, and upon hearing arguments, and upon perusal of records, and having stood over for consideration till this day, this court passed the following:

O R D E R

The petitioners pray to raise the attachment in respect of the petition mentioned 'B' Schedule property.

2. The case of the petitioners in brief as follows: The 1st respondent/decree holder was the absolute and exclusive owner of an extent of 0-47 cents in S.No.250/4 situates it Tambaram Village and Taluk, Kancheepurm District, which more particularly described as part of "A" schedule property. The 1st respondent and other land owners have entered into a joint venture agreement dated 05.04.2004 with the 2nd respondent, and the respondents 3 and 4 herein are the partners of 2nd respondent partnership firm. There was a dispute between them. Hence the 1st respondent has filed an O.A.No.196 of 2007 on the file of Hon'ble High Court, Madras and the respondent 2 to 4 have accepted the said case to initiate the arbitration proceedings. Later Arb.O.P.No.1 of 2010 was commenced. There was a compromise award was passed on 30/04/2010. As per the said compromise, the 1st respondent/decree holder/ claimant has to execute a release of charge on receipts of payments from the 2nd respondent. The compromises arbitration award reads as follows:-

1. That the parties herein shall strictly abide by the terms of the Memorandum of compromise dated 01/02/2010 entered into between all the above parties and filed before me on

15/03/2010;

2. That the respondents herein shall make payment of Rs.3,17,50,000/-(Rupees three Crores seventeen Lakhs and Fifty Thousands Only) and other payments to the first claimant within stipulated time as agreed by them under the memorandum of Compromise;
3. That on receipt of payments from the respondents, the claimants shall release the charge over the property proportionately as mentioned in the annexure to the memorandum of compromise and execute and register the necessary deeds for the same.

5. The 2nd respondent has entered into a construction agreement dated 24.07.2010 with the petitioners to put up a residential building in first floor bearing No.3.i.e.F3 flat. Hence the respondents 2 to 4 having paid a sum of Rs.50,00,000/- by way of demand draft dated 30.08.2010 to the 1st respondent and he executed a release of charge deed dated 30.08.2010 in favour of the respondents 2 to 4. After receiving the said amount, the 1st respondent has also executed a general power of attorney deed dated 30.08.2010 in respect of undivided UDS of Flats F1 and F3 to a total extent of 1389 sq. ft. in favour of Mrs.Maya Manoharan.

6. Based on the General Power of attorney deed, the 1st respondent represented by his power of attorney agent Mrs. Maya Manoharan has

sold the said undivided land of an extent of 1389 sq. ft. to the 2nd respondent under a sale deed dated 30.08.2010. Later, the 2nd respondent has sold the undivided land of an extent of 540 sq. ft. out of 1389 sq. ft. to the petitioners herein under a sale deed dated 30.08.2010. Later the 1st respondent has also executed a deed of release of charge on 30.08.2010 itself in respect of F3 and T1 flats and in respect of 1389 sq. ft. of undivided shares in the "A" schedule property. The 2nd respondent has handed over the possession of F3 building to the petitioners.

The petitioners have also mortgaged the B schedule property described hereunder by way of memorandum of deposit of title deeds with State Bank of India, under a deed dated 18.11.2010. After selling the 'B' schedule property described hereunder to the petitioners by the respondents 2 to 4, they also have no manner of right, title or interest in or over the 'B' Schedule property and thus, the alleged E.P. by the 1st respondent against the respondents 2 to 4 in respect of "B" Schedule property is not maintainable. The petitioners have been, are in continues possession and enjoyment of "B" schedule property.

Now, the petitioners came to know that the 1st respondent has filed the above E.P. in respect of the property already sold by him by way of sale deed dated 30.08.2010. It is further submitted that the 1st respondent has no manner of right, title or interest over the property which is already

sold by him through his power of attorney agent.

The 1st respondent knowing very well about the earlier transaction, purposefully filed this E.P for attachment with malafide intention and with a view to harass and cause loss and damages. Hence the 1st respondent has come to this Hon'ble Court with unclean hands and false plea.

Further, during the last week of November 2016, the petitioners have come to know that the petition mentioned "B" schedule property was attached and it is brought for sale. The attachment in respect of petition mentioned "B" schedule property is not maintainable. Hence, the petition.

3. The case of the 1st respondent in brief as follows: The present application is vexatious and not maintainable. This respondent entered into a Joint Venture agreement with the Respondents-JDs for development of the property owned by this respondent to an extent of 19644 sq. ft. Thereafter, certain dispute had arose which resulted in filing an application U/s. 9 of the Arbitration and Conciliation Act 1996 in O.A.No.196/2007 before the Hon'ble High Court, Madras. During the pendency of the above application, a memorandum of Compromise dated 01.02.2010 was entered between the parties therein and a consent Award dated 30.04.2010 was passed and also a charge is created over the property (schedule in the execution petition).

In terms of the consent award, the respondents-JDs are liable to pay

a sum of Rs.3,17,50,000/- on or before 30.08.2010. Further the Respondents-JDs are liable to reimburse expenses to an extent of Rs.16,18,985/- along with interest. Whereas, the respondents-JDs paid a sum of Rs.50,00,000/- on 30.08.2010 and on receipt of the said amount, this respondent executed a Deed of Cancellation of Settlement on the same day and also executed a Power of Attorney in respect of 1373 Sq. ft. undivided share of land pertaining to Flat Nos. F1 And F2. Whereas, the respondents-JDs have failed to make any further payments as stipulated in the consent award.

Further, this respondent-DH on non-receipt of the consented amount, filed this execution proceedings for attachment of the schedule mentioned properties. The respondents-JDs with malafide intention, not to comply with the terms as agreed in the compromise, acting hand in glove with the present petitioners to prolong the execution petition have filed the present application. Therefore, the petition is liable to be dismissed.

Both side heard and records perused.

In this application, on the side of the petitioners Ex.P1 to Ex.P9 were marked. No oral and documentary evidences were let in on either side.

On careful perusal of the entire case records and either side submissions, it is learnt that the 1st respondent-decree holder was the

absolute and exclusive owner of the "A" schedule property - Part. The 1st respondent and other land owners have entered into a Joint Venture Agreement dated 05.04.2004 with the 2nd respondent, and the respondents 3 and 4 herein are the partners of 2nd respondent partnership firm.

Further, it is learnt that thereafter certain dispute had arose between the parties which resulted in filing an application U/s. 9 of the Arbitration and Conciliation Act 1996 in O.A.No.196/2007 before the Hon'ble High Court, Madras. During the pendency of the above application, a memorandum of Compromise dated 01.02.2010 was entered between the parties therein and a consent Award dated 30.04.2010 was passed and also a charge is created over the property (schedule in the execution petition). In terms of the consent award, the respondents-JDs are liable to pay a sum of Rs.3,17,50,000/- on or before 30.08.2010. Based on the said consent award dated 30.04.2010, the 1st respondent-DH have filed the present execution proceedings.

Further, it is learnt that since the respondents-JDs have not turned up before this court to file their counter inspite of several opportunities, they have been called absent and was set exparte and an order of attachment in respect of the schedule in the execution petition also passed by this court on 27.09.2013. While the matter stood thus, the present

applicants-3rd parties have filed the present application to raise the attachment in respect of the petition mentioned 'B' Schedule property alleging that they are the bonafide purchasers of B schedule property.

It is the specific contention of the petitioners is that the respondents 2 to 4 have paid a sum of Rs.50,00,000/- to the 1st respondent and on receipt of the same, the 1st respondent executed a Release of charge deed dated 30.08.2010 in favour of the respondents 2 to 4 and also executed a GPA deed dated 30.08.2010 in respect of undivided UDS of Flats F1 and F3 to a total extent of 1389 sq. ft. in favour of Mrs.Maya Manoharan and on the same day, the 1st respondent through his above agent has sold the said undivided land to the 2nd respondent under a sale deed and in turn, the 2nd respondent has sold the undivided land of an extent of 540 sq. ft. (B Schedule Property) out of 1389 sq. ft. to the petitioners herein under a sale deed dated 30.08.2010.

After selling the 'B' schedule property described hereunder to the petitioners, the respondents also have no manner of right, title or interest in or over the 'B' Schedule property and thus, the alleged E.P file by the 1st respondent against the respondents 2 to 4 in respect of "B" Schedule property is not maintainable.

In this case, in order to substantiate the above claim of the petitioners, they have filed and marked the following documents:

Ex.P1	Copy of Claim Petition filed by the Decree Holder herein
Ex.P2	Promoter Agreement dated 24.07.2010 entered into between the Respondents 2 to 4 and Petitioners
Ex.P3	Certified Copy of GPA executed by 1 st respondent in favour of Maya Manoharan dated 30.08.2010
Ex.P4	Certified Copy of Sale Deed executed by 1 st respondent in favour of 2 nd respondent dated 30.08.2010
Ex.P5	Certified Copy of Sale Deed executed by 2 nd respondent in favour of petitioners dated 30.08.2010

On contrary, the learned counsel for the 1st respondent-DH denied the entire allegations of the petitioners and contended that since the respondents 2 to 4/JDs have not complied with the terms of the Award dated 30.04.2010, the Decree Holder is very much entitled to file this Execution Proceedings.

In this case, it is pertinent to note that though the 1st respondent-DH has vehemently opposed to allow this application at the first instance, he has categorically admitted that he has received a sum of Rs.50,00,000/- from the respondents 2 to 4 and further admitted the execution of Release of Charge Deed in favour of the respondents 2 to 4, Power of Attorney Deed in favour of one Maya Manoharan and Sale Deed in favour of the 2nd respondent dated 30.08.2010 and execution of Sale Deed by the 2nd respondent in favour of the petitioners dated 30.08.2010. Further, even in his counter he has admitted the above facts.

Therefore, on cumulation, on having considering the foregoing

discussion, it is the considered view of this court that under the light of the above said documents and either side submissions, the petitioners have proved that they are bonafide purchasers of the B schedule property vide Ex.P5 and had purchased the property even before filing of E.P. and order of attachment and made out a prima facie case in their favour.

Further, during the course of arguments, the learned counsel for the 1st respondent-DH submitted that the 1st Respondent-DH is having no objection in raising the attachment in respect of the B schedule property.

Therefore, on having considering the foregoing discussion, it is hold by this court that the petitioners have established their case by letting sufficient and convincing oral and documentary evidences and thus, this court is inclined to raise the order of attachment passed by this court dated 27.09.2013 and attachment dated 12.01.2016 in respect of the B schedule property. Accordingly, this petition is allowed. No cost.

In the result, this petition is allowed. The order of attachment passed by this court dated 27.09.2013 and attachment dated 12.01.2016 in respect of the B schedule property herein is hereby raised. No cost.

Dictated to the Steno-typist, directly computerized by him, corrected and pronounced by me in open Court, this the 22nd day of February 2021.

**Sd/-N.Vasanthaleela,
PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU.**

LIST OF WITNESSES ON BOTH SIDE:

-Nil-

LIST OF EVIDENCES:

Petitioners' Side:

Ex.P1	Copy of Claim Petition filed by the Decree Holder herein
Ex.P2	Promoter Agreement dated 24.07.2010 entered into between the Respondents 2 to 4 and Petitioners
Ex.P3	Certified Copy of GPA executed by 1 st respondent in favour of Maya Manoharan dated 30.08.2010
Ex.P4	Certified Copy of Sale Deed executed by 1 st respondent in favour of 2 nd respondent dated 30.08.2010
Ex.P5	Certified Copy of Sale Deed executed by 2 nd respondent in favour of petitioners dated 30.08.2010
Ex.P6	Electricity Consumption Card in the name of the Petitioners
Ex.P7	EB Receipt in the name of the petitioners
Ex.P8	EB Receipt in the name of the petitioners
Ex.P9	Encumbrance Certificate in respect of B schedule property

Respondents' Side:

-Nil-

**Sd/-N.Vasanthaleela,
PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU.**