

**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: Tuesday, the 24th day of November 2020

E.A.No.85 of 2016 in E.P.No.121 of 2012

Mr.U.Sivabalan Petitioner/Objector

/Vs/

1. M/s. Reliable Investment & Developers,
Rep. By Mr.Javed Mohamed Hussain. Respondent/DH

2. Mr.D.Dhandapani

3. Mr.D.Ganesan

4. Mr.D.Sridhar

5. Mrs.Kamala Ganesan

6. Mrs.Radha Sridhar

7. Mrs.Latha Ravichandran

8. M/s.Meena & Co. Respondents/JDs

***By petition dated 20.06.2016, U/o.21 Rule 58 R/w. 97
and 99 of CPC., the petitioner prays to raise the order of
attachment against the Item No.4 property mentioned in
the Execution petition.***

This petition came up before me on the 18th day of November 2020 for final hearing, in the presence of M/s. K.Balajee and J.Saraladevi, Advocates appearing on behalf of the petitioner/objector, and of M/s. A.Tamizhvanan, D.Narayana Kumar, K.Ezhumalai, Advocates appearing on behalf of the respondent/DH, and that the respondents/JDs were being called absent and set exparte, and upon hearing both side arguments and upon perusal of the available records, and having stood over for consideration till this day, this court passed the following:

ORDER

This petition has been filed by the petitioner praying to raise the order of attachment against the Item No.4 property mentioned in the Execution petition.

2. Both side heard and records perused.

3. On the side of the petitioner, the petitioner was examined as PW1 and Ex.P1 to Ex.P12 were marked and on the side of the respondent-DH, one Javeed Mohammed Hussain, Authorized person of the respondent-DH was examined as RW1 and Ex.R1 to Ex.R6 were marked.

4. In this case, the petitioner is Objector/3rd Party, the 1st respondent is the Decree Holder and the Respondents 2 to 8 are Judgment debtors.

5. On careful perusal of the entire case records and either side submissions it is learnt that based on the Lok Adalath Award passed in Case. No. 4306/SS/2009 on the file of the Chief Metropolitan Magistrate, 11th Court at Bandra, Mumbai dated 05.12.2009, the 1st respondent herein filed the above execution petition seeking for the relief of attachment of immovable properties of the Respondent 2 to 8 herein. Further it is learnt, the schedule mentioned properties in the Execution Proceedings were attached on 13.12.2013 as per the order of this court. While being so, the petitioner herein claiming to be the absolute owner of the Item No. 4 of

the E.P. schedule mentioned property, has filed the present application seeking raise the order of attachment against the Item No.4 and to stay the sale through auction and the same was dismissed by this court on 27.10.2017.

6. Further, it is learnt that aggrieved by the said order of this court, the petitioner herein preferred a revision before the Hon'ble High Court of Madras and vide its order, the Hon'ble High Court of Madras setaside the order of this court dated 27.10.2017 and remanded the matter to this court and directed this court to consider the application afresh and to dispose. Hence, the present application was once again taken on file of this court on 16.08.2018.

7. Whereas, in the meanwhile, on 16.03.2018, the Item No.4 of the E.P. schedule mentioned property were sold in the Public Auction and was purchased by one Mr.Ramasamy, S/o.Manickam. But the sale not yet confirmed by issuing Sale Certificate.

8. In this application, it is the specific case of the petitioner that he has purchased the Item No.4 (Plot No. 1A) of the E.P. schedule mentioned properties from the 3rd respondent and after the purchase, he mutated his name in the revenue records. Further, on 01.06.2016, when the petitioner went for periodical inspection to his properties, he found a Notice for proclamation of Sale was fixed in his properties and on 02.06.2016, on

verification of the Encumbrance Certificate, he found that the properties are attached by the order of this court in E.P.No.121 of 2012. Further it is contended by the petitioner that he is a bonafide purchaser for valuable consideration and order of attachment of this court will not bind the present petitioner. Hence, the petition.

9. On the other hand, the respondent-DH has denied the entire allegations of the petitioner and contended that the present petition is not maintainable since it was filed in a belated stage after the order of attachment by this court and after some of the properties were sold in a Public Auction conducted by this court. Further, it is contended that the petitioner is not bonafide purchaser and only in order to deprive the legal rights of this respondent-DH, in collusion with the respondent/JDs, the petitioner herein has made this fraudulent purchase and filed this malicious petition.

10. Further, it is contended by the respondent-decree holder that originally the schedule properties and other properties were mortgaged with the ICICI Bank by the respondents/judgment debtors in the year 2005, but, the respondents/judgment debtors failed to repay the said loan amounts and upon complying the acts and rules of the SARFAESI Act, the said Bank took the possession of the properties. While being so, before the Bank could proceed further for sale under the SARFAESI Act by the bank,

the respondents-JDs were introduced by the said Bank to the respondent-DH and a tri-party MOU was entered into between the respondents-JDs, ICICI Bank and respondent-DH on 29.03.2008 and by the said MOU, the respondents-JDs have agreed to sell the properties under the SARFAESI Act to the respondent-DH within a period of six months and on the assurance, the respondent-DH made payment of Rs.60,00,000/- to the respondent and stopped ICICI from selling the properties in the auction.

11. Further, it is contended by the respondent-DH that for the best reasons known to respondents-JDs, they could not perform their part of contract and upon discussions, the respondents-JDs came forward to repay the amount borrowed and issued a cheque for Rs.60,00,000/-, but, on presentation, the said cheque got returned unpaid and dishonoured. Hence, the respondent-DH initiated proceedings U/s. 138 of the Negotiable Instrument Act against the respondents-JDs and after the receipt of summons, the respondents-JDs wanted the case to be referred before the Lok Adalat for an amicable settlement and based on the terms of settlement passed, a Lok Adalat award was passed on 05.12.2009. Thereafter, since, the respondents-JDs have failed to comply the Lok Adalat Decree, the present execution petition was filed by the respondent-DH.

12. It is the specific case of the Respondent-DH that the properties were mortgaged for the loan amount sanctioned by the ICICI Bank Limited in the year 2005 and showing the very same properties, the loan amount was obtained from the respondent-DH and based on the said loan amount only Lok Adalath Award was passed and thus, without satisfaction of the Lok Adalath Award, the said properties cannot be sold and hence, any sale in collusion would not bind the respondent-DH. Therefore, the learned counsel for the respondent-DH prays for the dismissal of the present petition.

13. Putting into a nut shell, it is the case of the petitioner that the properties in the schedule of the Execution proceedings and other properties were Mortgaged by the respondents-JDs with the ICICI Bank Ltd. for a loan and since, they were not able to repay the loan amount, the ICICI Bank Limited, through its recognized agent IARC made an offer dated 24.12.2009 to the respondents-JDs for an one time settlement of Rs.1.55 Crores and in turn, the 2nd respondent-JDs approached M/s. Chandrasekar Foundation who was interested in purchasing the properties for the above said one time settlement and in turn the said M/s. Chandrasekar Foundation paid the one time settlement to the ICICI Bank (through IARC) vide RTGS payment and subsequently on 24.04.2010, the respondents-JDs executed sale deeds in favour of the present petitioner in

respect of Item No.4 of the schedule mentioned property. Hence, being the absolute owner of the property, the petitioner filed the present petition to raise the order of attachment.

14. In this case, in order to substantiate the claim of the petitioner, one Rajendran was examined as PW1 and adduced evidence corroborating his case and further, the following documents are filed and marked:

Ex.No.	Dated	Description of the Document
P1	24.04.2010	Original Sale Deed in favour of the petitioner executed by Respondent-JD No.3 in respect of Item No.4 of the Execution Proceedings.
P2	---	Patta standing in the name of the petitioner in respect of the S.No.8/36B of the Neelangarai Village.
P3	24.12.2009	Communication from IARC to M/s. Meena and Co.
P4	26.12.2009	Communication from 2 nd respondent to M/s. Chandrasekar Foundation.
P5	28.12.2009	Communication from M/s. Chandrasekar Foundation to M/s. Meena and Co.
P6	29.12.2009	Communication from M/s. Chandrasekar Foundation to International Asset Reconstruction Company Pvt. Ltd.
P7	---	Bank Statement of M/s. Chandrasekar Foundation from 01.12.2009 to 31.12.2009.
P8	---	Bank Statement of M/s. Chandrasekar Foundation from 01.02.2010 to 28.02.2010.
P9	15.09.1997	Original Sale Deed in favour of the M/s. Meena & Co. in respect of Plot No.1 (Item No.4 and another)
P10	02.05.1986	Original Sale Deed in favour of the vendors of the Respondents-JDs.
P11	---	Encumbrance Certificate in respect of the Execution Proceedings Schedule mentioned property from 01.01.2009 to 01.06.2016.
P12	---	Original Declaration Affidavit given by the petitioner.

15. In this case, the petitioner is mainly relying upon the exhibits Ex.P3 to Ex.P8. Ex.P3 is the 24.12.2009 dated Communication from IARC to M/s. Meena and Co. On careful perusal of the Ex.P3, it is learnt that IARC (authorised agent of ICICI Bank) has offered an one time settlement to the respondents-JDs in respect of the repayment of loan and offered to pay Rs.1.55 Lacs in two installments i.e., Rs.25,00,000/- before 28.12.2009 and Rs.Rs.1,30,00,000/- before 15.02.2010. At this juncture, it is pertinent to note that the contention of the petitioner that the IARC (International Asset Reconstruction Company Pvt. Ltd.) is the recognized agent of the ICICI Bank and was deputed to collect the loan amount from the respondents-JDs is neither disputed nor denied on the side of the respondent-DH.

16. Ex.P4 is the 26.12.2009 dated Communication from 2nd respondent to M/s. Chandrasekar Foundation. On careful perusal of the Ex.P4 it is learnt that on receipt of the Ex.P3 (one time settlement offer) from the ICICI Bank (IARC), the 2nd respondent-JD approached M/s. Chandrasekar Foundation (petitioner's father) who agreed to purchase the properties of the respondents-DH for Rs.40.50 lacs per ground, to make the initial payment of Rs.25,00,000/- to the ICICI Bank (IARC).

17. Ex.P5 is the 28.12.2009 reply communication made by the M/s. Chandrasekar Foundation to the respondents-JDs in reply to the Ex.P4. On

careful perusal of the Ex.P5 it is learnt that the said Chandrasekar Foundation has agreed to pay the initial amount of Rs.25,00,000/- to the ICICI Bank (IARC). Ex.P7 is the Bank Statement of M/s. Chandrasekar Foundation from 01.12.2009 to 31.12.2009. On careful perusal of the same, it is learnt that on 29.12.2009 a sum of Rs.25,00,050/- is transferred to the IARC by M/s. Chandrasekar Foundation via RTGS and further it is learnt that vide Ex.P6 – 29.12.2009 dated letter by the M/s. Chandrasekar Foundation to the IARC, the said payment was informed to the IARC. Ex.P8 is the Bank Statement of M/s. Chandrasekar Foundation from 01.02.2010 to 28.02.2010. On careful perusal of the same, it is learnt that on 11.02.2010 a sum of Rs.1,30,00,050/- is transferred to the IARC by M/s. Chandrasekar Foundation via RTGS.

18. Further, in support of the claim of the petitioner that he is a bonafide purchaser, the sale deed dated 24.04.2010 standing in the name of the petitioner is marked as Ex.P1. On careful perusal of the Ex.P1 it is learnt that the sale deed is a registered document. Further it is learnt that the respondents-DH No.3 have executed the sale deed in respect of the Plot No.1A in favour of the petitioner herein. Furthermore, the parent documents of the said property is also filed and marked on the side of the petitioner as Ex.9 and Ex.P10.

19. In this case, it is pertinent to note that the present Execution proceedings was filed before this court in the year 2012. Further, the schedule mentioned properties in the Execution Proceedings were attached on 13.12.2013 as per the order of this court. Whereas, the petitioner purchased the property (Plot No. 1A) in the year 2010 itself. Hence, it is clear that at the time of purchase by this petitioner there was no attachment or stay or charge or any legal impediments over the property except the lok adalath award.

20. 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, the petitioner has proved that he had purchased the property (Plot No. 1A) in the year 2010 itself i.e., far before the filing of E.P. and order of attachment and made out a prima facie case in his favour and shifted the onus of proof on to the shoulders of the Respondent-DH.

21. In this case, it is the case of the respondent-DH that originally the schedule properties and other properties were mortgaged with the ICICI Bank by the respondents/judgment debtors in the year 2005, but, the respondents/judgment debtors have failed to repay the said loan amounts and upon complying the acts and rules of the SARFAESI Act, the said Bank took the possession of the properties. While being so, the

respondents-JDs were desperately wanted to save the properties being sold to less value, approached respondent-DH and a tri-party MOU was entered into between the respondents-JDs, ICICI Bank and respondent-DH on 29.03.2008 and by the said MOU, the respondents-JDs have agreed to sell the properties under the SARFAESI Act to the respondent-DH within a period of six months and on the assurance, the respondent-DH made payment of Rs.60,00,000/- to the respondent.

22. In order to prove the above claim, the respondent-DH has examined himself as RW1 and the following documents are marked on the side of the Respondent-DH:

Ex.No.	Dated	Description of the Document
P1	05.04.2008	Letter from 2 nd Respondent to the DH
P2	12.04.2008	Letter from 4 th Respondent to the DH
P3	29.05.2008	Letter from 2 nd Respondent to the DH
P4	29.05.2008	Letter from 2 nd Respondent to the DH
P5		Letter from 8 th Respondent to the DH
R6 (cross of Pw1)	29.03.2008	MOU-cum-Declaration entered into between the Respondent-DH, Respondents-JDs and ICICI Bank Ltd.

23. On careful perusal of the above documents, it is learnt that being intending purchaser, the respondent-DH intended to purchase the properties in Plot Nos. 1A, 3 to 6 in Sri Venkateswara Nagar from the respondents-JDs and have entered into an unregistered tripartite MOU

(Ex.R6) with the respondents-JDs and ICICI Bank Ltd and total sale consideration of Rs.2.55 crores was fixed between the parties and a sum of Rs.60,00,000/- was paid to the respondents-JDs as advance.

24. In this case, it is the specific case of the respondent-DH that the petitioner is not a bonafide purchaser. Further, contended that though it was agreed between the petitioner and the respondents-JDs Rs.40.50 lacs per ground is the sale value, only a lesser price was shown as sale price in the Ex.P1 and furthermore, though it is stated that the payment was made by M/s. Chandrasekar Foundation, the sale deed was registered in the name of the petitioner and thus, the said sale transaction is shabby and a fraudulent one.

25. In this case, it is not a disputed fact that the properties of the Respondents-JDs were under mortgage with the ICICI Bank. Further, as discussed earlier, the petitioner has clearly established the payment (Rs.1.55 Crores) made to the ICICI Bank (through IARC) by letting sufficient documentary evidences. Therefore, the said amount paid to the ICICI Bank for the discharge of mortgage should be treated as part of sale consideration.

26. Further, it is not irrelevant to state that the present petitioner is none other than the son-in-law of Mr.Chandrasekar who is the founder of M/s. Chandrasekar Foundation. It is an usual course that the sale deeds

are executed in the favour of the payee or in favour of the payee's nominee. Further, it is not alien to state that during the same transaction, the said M/s. Chandrasekar also purchased some of the properties in his name and in the name of his son. Therefore, it is the view of this court that only since a lesser sale price (less than a market price) is quoted in a Sale Deed, and the sale deed was executed in favour of nominee of the payee, the said sale deed or sale transaction cannot be considered as a fraudulent transaction.

27. Therefore, from the above discussion, the petitioner has proved that he is a bonafide purchaser in respect of the property in Item No.4 of the Execution proceedings by letting sufficient oral and documentary evidences, even before the order of attachment.

28. In this case, it is the further specific case of the Respondent-DH that the properties were mortgaged for the loan amount sanctioned by the ICICI Bank Limited in the year 2005 and showing the very same properties, the loan amount was obtained from the respondent-DH and based on the said loan amount only Lok Adalath Award was passed and thus, without satisfaction of the Lok Adalath Award, the said properties cannot be sold and hence, any sale in collusion would not bind the respondent-DH. Therefore, the learned counsel for the respondent-DH prays for the dismissal of the present petition.

29. Whereas, it is also their case of the Respondent-DH that for the best reasons known to respondents-JDs, they could not perform their part of contract and upon discussions, the respondents-JDs came forward to repay the amount borrowed and issued a cheque for Rs.60,00,000/-. Hence, it is clear that the respondent-DH has dropped the idea of purchasing the properties from the Respondents-JDs and amicably settled between the respondents i.e., DH as well as JDs for repayment of advance amount of Rs.60,00,000/- to the respondent-DH.

30. Furthermore, it could be seen from the averments of the respondent-DH that since, the cheque given by the respondents-JDs for repayment of advance amount got dishonored only, the respondent-DH initiated proceedings U/s. 138 of the Negotiable Instrument Act against the respondents-JDs. Further, it is to be noted here that the respondent-DH has not filed a suit either for specific performance or a mortgage suit through which encumbrance over the properties can be made.

31. Therefore, on having considered the foregoing discussion, it is held by this court that the Lok Adalath Award passed in Case. No. 4306/SS/2009 on the file of the Chief Metropolitan Magistrate, 11th Court at Bandra, Mumbai dated 05.12.2009 is only with regard to the criminal proceedings initiated by the respondent-DH as against the respondents-JDs in respect of the dishonored cheque issued by them and nothing else.

Further, it is held that though the respondent-DH has entered into an MOU in respect of the Execution proceedings schedule mentioned properties in the year 2008, until the date of filing of the above execution proceedings in the year 2012 and until the date of order of attachment by this court in the year 2013, the respondent-DH has not created any encumbrance by way of any attachment of any stay or charge over the property legally. Therefore, it is clear that the respondent-DH has not created any legal impediment or bar to anyone to purchase those properties in their favour.

32. Whereas, from the available records, it is clearly established by the petitioner that he is bonafide purchaser of the property and has purchased the property in the year 2010 when there was no encumbrance/charge/bar/any legal impediment over the property. Thus, the respondent-DH cannot implead the properties purchased by the petitioner in this Execution Proceedings which is filed for attachment and sale. But, unfortunately, the respondent-DH has impleaded the properties purchased by the petitioner and unfortunately, an order of attachment was passed against those properties.

33. At this juncture, it is pertinent to note that as already discussed, on 16.03.2018, the Item No.3 and 4 of the E.P. schedule mentioned properties were sold in the Public Auction and was purchased by one

Mr.Ramasamy, S/o.Manickam and on the date of purchase, he had deposited 1/3rd amount of the Auction Price and subsequently, he had deposited the balace 2/3rd amount of the Auction Price into the account of this court. Now, the point for consideration is that whether the order of attachment cane be raised at this juncture?

34. In this circumstances, this court borne in mind to extract the decision held by our Hon'ble Supreme Court in Hamda Ammal Vs. Avadiappa Pathar and 3 others cited in 1990 SCR Supl. (2) 594 and (1991) 1 Supreme Court Cases 715:

*Held – When the property belonged to the defendant-JDs (vendors) and the sale deed had already been executed by them prior to the attachment before judgment and only its registration remains, then **neither the attachment before judgment nor a subsequent attachment or court sale of the property would confer any title by preventing the relation back.** The fact that the document of the sale had not been registered until after the attachment makes no difference. Even un registered document can be received as evidence for purposes mentioned in the proviso to Section 49 of the Registration Act. The contention that till registrateion, the execution of the sale deed does not confer any rights whatsoever on the vendee cannot be accepted.*

35. From the above decision held by the Hon'ble Supreme Court, it is learnt that neither the attachment before judgment nor a subsequent attachment or court sale of the property would confer any title even if there existis an earlier unregistered sale deed. In this case, on hands, it is an admitted fact that the petitioner has purchased the properties from the respondents-JDs in the year 2010 itself when there was no legal impediment over the property and the sale deed was executed and registered on 24.04.2010. Hence, on the date of execution of sale deed in favour of the petitioner itself, the respondents-JDs have lost their right over the properties sold to the petitioner. In other words, from the date of purchase, the petitioner has become absolute owner of the properties. Whereas, the Execution proceedings itself filed only in the year 2012, after two years from the date of purchase by the petitioner. **The property in question admittedly belonged to the respondents-judgment debtors and once it is held that a sale deed had already been executed by them in favour of petitioner on 24.04.2010, then neither the attachment before judgment nor a sub-sequent attachment or court sale in favour of any third party can confer any title in his favour by preventing the relation back.**

36. Therefore, on having considering the foregoing discussion, it is hold by this court that the petitioner has established his 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 13.12.2013. Accordingly, this petition is allowed. No cost.

In the result, this petition is allowed. The order of attachment passed by this court dated 13.12.2013 is hereby raised. No cost.

Dictated to the Steno-typist, directly computerized by him, corrected and pronounced by me in open Court, this the 24th day of November 2020.

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

LIST OF WITNESSES:

Petitioner's Side:

PW1 Rajendiran

Respondent/DH Side:

RW1 Javeed Mohamed Hussain:

LIST OF EXHIBITS:

Petitioner's Side:

- Ex.P1 24.04.2010 Original Sale deed in favour of the petitioner;
Ex.P2 Patta in the name of the petitioner;
Ex.P3 24.12.2009 Photocopy of letter issued by the IARC, recovery agent of ICICI Bank to Meena & Co.
Ex.P4 26.12.2009 Letter issued by the 2nd respondent on behalf of Meena & Co., to Chandrasekar Foundations;
Ex.P5 28.12.2009 Letter issued by the Chandrasekar foundations to Meena & Co.;;
Ex.P6 29.12.2009 Letter issued by the Chandrasekar Foundations to IARC;
Ex.P7 Original Statement of Account of Chandrasekar Foundations for the period from 01.12.2009 to 31.12.2009;

- Ex.P8 Original Statement of Account of Chandrasekar Foundations for the period from 01.02.2010 to 28.02.2010;
- Ex.P9 15.09.1997 Original Sale Deed in the name of the M/s. Meena & co. respondent;
- Ex.P10 02.05.1986 Original Sale Deed in the name of the vendors of the respondents-JDs;
- Ex.P11 Original Encumbrance Certificate;
- Ex.P16 Original Declaration Affidavit of the petitioner.

Respondent/Decree Holder Side:

- Ex.R1 05.04.2008 Letter written by the JD to the DH;
- Ex.R2 12.04.2008 Letter written by the JD to the DH;
- Ex.R3 29.05.2008 Letter written by the JD to the DH;
- Ex.R4 29.05.2008 Letter written by the JD to the DH;
- Ex.R5 Letter written by the JD to the DH;
- Ex.R6 29.03.2008 Original MOU entered into between the Decree Holder, the Judgment Debtors and the ICICI Bank Ltd.;

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

**PRINCIPAL DISTRICT COURT,
KANCHEEPURAM AT CHENGALPATTU.
Copy of the Judgment: EA 85 of 2016
Dated: 24.11.2020**