

In the Court of the Principal Subordinate Judge of Palani.

Present: Thiru. K. Hariharan, M.L.,

Principal Subordinate Judge, Palani.

Tuesday, 21st day of February 2023.

E.P. 14/2018

in

O.S.No.266/2013

(CNR.No. TNDG07-0001442018)

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Mujipur Rahman

... Petitioner/Plaintiff

/Vs/

1. Maragatham (Died)

2. Dhandapany

3. Kalidoss

... Respondents/Defendants.

(Amended as per order in E.A.No. 36/2019
dated 7.6.2019)

This petition came up for final hearing before me on 08.02.2023 in the presence of Thiru.S.Bagavathyraj and Thiru.K.Manisekar, the learned Counsels for the Petitioner, Thiru.P.Jeyaram and Thiru.M.Kalimuthu, the learned Counsels for 2nd respondent, 3rd respondent called absent and was set exparte and upon heard the enquiry on both sides and perusing the records and having stood over till this day for consideration, this court delivers the following:

ORDER

The petition has been filed by the petitioner seeking to bring the petition mentioned property for sale under Order 21, Rule 66 of CPC.

2. Petition averments which are found essential for the disposal of the petition is that :

The suit in O.S.No.266/2013 has been filed by the petitioner against the 1st respondent and the same was decreed on 19.06.2017 for a sum of Rs. 2,22,733/- has to be paid by the 1st respondent to the petitioner as per the decree. Further the petitioner has also sought for interest at the rate of 6% p.a for the principal sum of Rs. 2,00,000/- from the date of the suit. Since the 1st respondent/defendant has not come forward to make the repayment of the amount. Hence this execution petition has been filed by the petitioner for the aforementioned relief. In the meantime the 1st respondent was died leaving behind the 2nd and 3rd respondents are the legal heirs of deceased 1st respondent.

3. Third respondent called absent and was set exparte.

4. Counter averments filed by the 2nd respondent which are found essential for the disposal of the petition is that :

The 2nd respondent has filed the counter stating that the respondents have not enjoying the petition mentioned property till date. Further it is the contention of the 2nd respondent that the petition mentioned property has been sold to one Thangavel by mother of the 2nd 3rd respondents. Further it is the contention of the 2nd respondent that they were not aware of the petitioner so far. Hence any action against taken by the petitioner with respect to the petition mentioned property is contrary to law and sought for to dismiss the petition.

4. Point for determination is whether the petition could be allowed ?

5. No oral or documentary evidence adduced on both sides.

6. **Answer :**

On the side of the petitioner the encumbrance certificate of the petition mentioned property as on 22.12.2022 has been filed before this Court. In which the attachment of the property by the Court reflecting the name of the deceased 1st respondent is being entered. Till date the property reflects the name of the deceased 1st respondent. In the circumstances, this Court considers the property being in the name of the deceased 1st respondent, the petitioner seeking to attach and sell the property in lieu of non compliance of the decree by the respondents is considered as sustainable. Hence the petition is considered to be allowed.

In the result, the petition is allowed. Since the property have been already attached. For test batta by 27-02-2023.

Dictated to the stenotypist, typed by her, corrected and pronounced by me in the open court this the 21st day of February 2023.

Principal Sub Judge,
Palani.

Petitioner and Respondent Side Witnesses and Documents : Nil.

Principal Sub Judge,
Palani.

