

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,
I Additional District Munsif, Nagercoil.

Tuesday, on the 10th day of December, 2024.

E.A. No. 2 of 2024 & 3 of 2024

in

E.P. No. 24 of 2021

CNR. No.TNKK04-000095-2021

in

O.S. No. 502 of 2007

Rani

... Petitioner/ Claimant

-vs -

1. Gohul Kannan

... Respondent/Petitioner

2. Yesudhas

... Defendant

These Petitions came before this Court on 26.11.2024 for final hearing in the presence of Mrs. K. Vijaya Lakshmi, Learned Counsel for the Petitioner and Mr. V. Kannan, Learned Counsel for the 1st Respondent. The 2nd Respondent Set Exparte. Upon hearing both sides and upon perusing the case records and having stood over till date for consideration, this Court hereby delivers the following:

COMMON ORDER

1. The Petitioner had filed I.A. No. 2 of 2024 under Order XXI Rule 59 of Code of Civil Procedure seeking an order to stay the sale proceedings dated

20.11.2023 in E.P. No. 24 of 2021 in O.S. No. 502 of 2007.

The Petitioner had filed I.A. No. 3 of 2024 under Order XXI Rule 58 of Code of Civil Procedure seeking an order to granting permission to adjudicate the Petitioner's right over the petition schedule property.

2. The Petitioner had stated that the 2nd Respondent settled the Petition schedule property on the Petitioner on 27.11.2010 vide Doc. No. 4258 of 2010 Joint Sub Registrar Office, Nagercoil, since then, she is in peaceful possession. On 19.10.2023, the Court Amin, affixed Auction Sale Notice on the door. Only thereafter, she came to know about the pending case. The Petitioner had put all her hard earned income, in the Petition schedule property. If the same is sold, she will be put to irreparable loss and hardship, which cannot be compensated in terms of money. Hence the above Petitions.

3. The 1st Respondent had filed counter stating that the above Execution Petition is filed to execute the Decree dated 16.07.2010. The 2nd Respondent/Judgement Debtor had settled the property, on the Petitioner to defraud the 1st Respondent/Decree Holder. The Petitioner is well aware of the suit and Attachment Order, She is working in District Collector's Office. She had filed above Petition in collusion with the 2nd Respondent. The Petitioner is not entitled for any Petition reliefs. Hence the above Petitions are liable to be dismissed.

4. The point for consideration Whether the above Petitions have to be allowed or not ?

5. The Petitioner had exhibited the Settlement Deed dated 27.11.2010 bearing Doc. No. 4258 of 2010 as Ex.P1 and Encumbrance certificate for the period covering from 01.01.1998 to 05.01.2021 in respect of Survey No. 999/M4/16/17 as Ex.P2. The 1st Respondent/Decree Holder had filed the above Execution Petition seeking to execute the decree dated 16.07.2010, made in O.S. No. 502 of 2007, whereby it was decreed that the Plaintiff is entitled for Rs. 93,705/- (Rupees Ninety Three Thousand and Seven Hundred and Five Only) with interest at 12% on Rs. 90,000/- (Rupees Ninety Thousand Only), during the pendency of the suit and interest at 6% from the date of decree until realization and for cost of Rs. 9,763/- (Rupees Nine Thousand and Seven Hundred and Sixty three Only) to be recovered from the property, obtained by the respondent from late Thangam, except the exempted property. The 1st Respondent/Decree Holder had stated that the defendant had not paid the decree amount and that there is no appeal filed by the Judgement Debtor against the said decree.

6. In the main Execution Petition, the 2nd Respondent/Judgement Debtor, in his counter had stated that the 2nd respondent had not held the attached property, as described in the Execution Petition. The 2nd respondent is not aware of any boundary marks of the property mentioned in the Petition. Further the properties held by the 2nd respondent was already settled on his daughter U.Rani vide Document dated 27.11.2010, bearing Doc. No. 4258 of 2010. Further the 2nd respondent's property is completely covered up, with dwelling houses and it is in the possession of the respondent's daughter U. Rani, who is the owner of the said property. He had further

stated that there is no one cent of vacant land available with the 2nd respondent, as claimed in the Petition.

7. The said contention made by the 2nd Respondent was considered and negatived by this Court and only thereafter Sale was ordered. Now the Settlee had come before this Court, with the above applications. From the pleadings of both parties, it could be seen that there is no quarrel with regard to the decree passed in O.S. No. 502 of 2007. The Petitioner's contention is that the 2nd Respondent had settled the property held by him on his daughter namely the Petitioner herein namely U. Rani under document dated 27.11.2010 bearing No. 4258 of 2010.

8. The 1st Respondent/Decree Holder had filed the attachment order in the passed in I.A.No.1063 of 2007 in O.S. No. 502 of 2007, stating that the Petition schedule property was attached as early as on 06.06.2008 and that the alleged settlement in favour of the Petitioner herein namely U. Rani is dated 27.11.2010, i.e. subsequent to the attachment and during the pendency of the suit, only with the object of defeating the 1st Respondent/Decree Holder's right in the above Execution Petition. In such circumstances, the Petitioner's claim is not-acceptable to this Court for the reason that the alleged settlement is subsequent to the order of attachment, passed by this Court. Hence the Settlement Deed executed by the 2nd Respondent in favour of his daughter the Petitioner herein, is subject to the order of attachment, passed in the above Suit. Hence the Petitioner's contentions are not acceptable. The Petitions are liable to be dismissed. In the result

I.A. No. 2 of 2024 is dismissed. No Cost.

I.A. No. 3 of 2024 is dismissed. No Cost.

Dictated to the Steno-Typist, typed by her directly in Computer, corrected and pronounced by me, in open Court this, the 10th day of December, 2024.

I Additional District Munsif,
Nagercoil.

Petitioner's side witnesses & documents : Nil.

Respondents' side witnesses & documents : Nil.

I Additional District Munsif,
Nagercoil.

*I ADMCourt, Nagercoil.
Draft/Fair Common Order in
E.A.No.2/2024 & 3/2024 in
E.P.No. 24/2021 in
O.S.No.502/2007
Date:10.12.2024.*